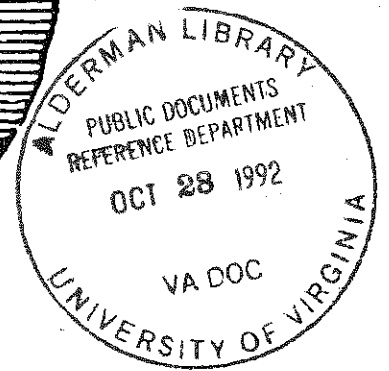
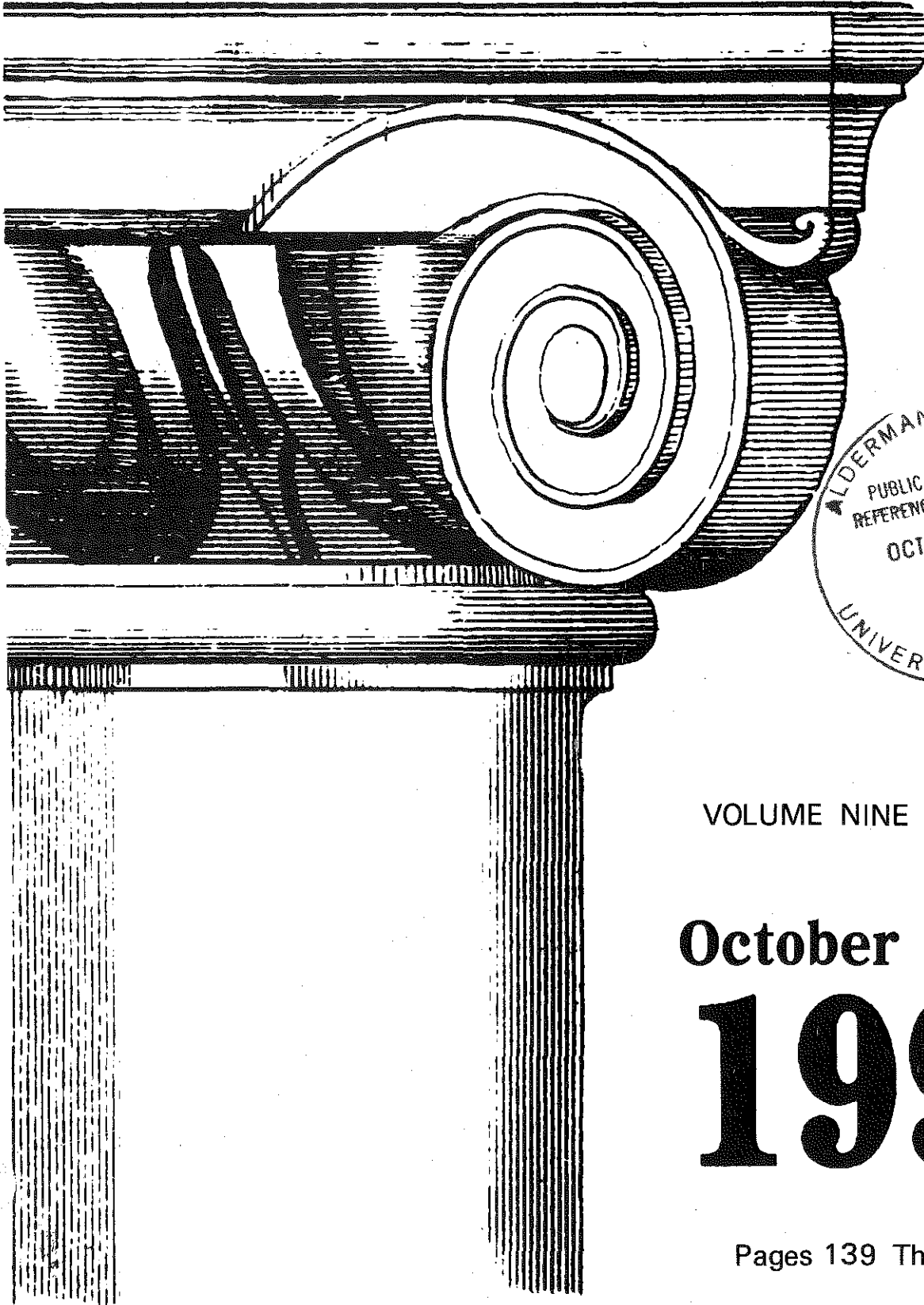


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THE VIRGINIA REGISTER

OF REGULATIONS



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October 19, 1992

1992

Pages 139 Through 256

VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations*.

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the *Virginia Tax Bulletin* issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register*.

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

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

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register*.

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall

be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution—Incorporating Requirements of Title V of the Clean Air Act.** The purpose of the proposed action is to amend § 120-08-04 to incorporate the requirements of Title V of the Clean Air Act, as amended in November 1990.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 18, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal statutory requirements: Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the Department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the Department has an agreement with the owner through the permit that these requirements will be carried out. It enables the Department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the Department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

At all facilities, operating conditions change over time, new technologies become available, and new regulatory requirements are developed that may necessarily change original permit conditions. Operating permits provide a mechanism to adapt to these changing conditions.

Owners of sources subject to compliance programs through new regulatory initiatives or other air quality planning requirements must sign a consent order which is, in effect, an agreement between the Department and the owner for the source to meet those initiatives or requirements. An operating permit program supplants the use of consent orders under these conditions and removes the negative connotation that comes with signed consent orders. Consent orders are generally used after a facility has been found in violation of the regulations when the Department needs an enforceable administrative mechanism to ensure that the facility's operation will change to avoid a violation in the future.

Current federal policy allows the use of emissions trading activities by sources to meet emission standards in a more cost effective manner. These activities include bubbling, netting, offsetting and banking. The operating permit provides a mechanism for implementing and enforcing emissions trading activities, provided EPA policy or a state generic policy, as appropriate, is followed. Currently these activities are enforced using consent orders which, as explained above, have a negative connotation.

Notices of Intended Regulatory Action

An operating permit provides the mechanism for the Department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the Department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the Department.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source.

Section 502 (a) requires that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.
2. Major sources, defined as follows:
 - a. any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
 - b. in nonattainment areas designated as serious, any source emitting 50 tpy or more (in Virginia, the northern Virginia area is designated serious for ozone); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy, respectively; and
 - c. any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under section 112.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.
4. Any source subject to new source performance standards under section 111.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under Title I, part C or the nonattainment area new source review program under

Title I, part D.

6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502 (b) sets out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications.
2. Monitoring and reporting requirements.
3. A permit fee system.
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act.
6. Authority to issue permits for a fixed term, not to exceed five years.
7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan.
8. Authority to terminate, modify, or revoke and reissue permits for cause, which is not further defined, and a requirement to reopen permits in certain circumstances.
9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties.
10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion.
11. Procedures for (a) expeditiously determining when applications are complete, (b) processing applications, (c) public notice, including offering an opportunity for public comment, and a hearing on applications, (d) expeditious review of permit actions, and (e) state court review of the final permit action.
12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.
13. Authority and procedures to make available to the

Notices of Intended Regulatory Action

public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of section 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

Section 503 (b) requires that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

Section 503 (d) specifies that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

Section 503 (e) requires that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under section 114 (c) of the Act can be submitted separately.

Section 504 specifies what is to be included in each operating permit issued under this program. Section 504 (a) requires that each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

Section 504 (b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

Section 504 (c) requires that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to

assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504 (b). Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

Section 504 (d) allows the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

Section 504 (e) allows the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

Section 504 (f) provides a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with Section 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. the permit includes the applicable requirements of those provisions, or
2. the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Section 503 (c) specifies that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

Section 505 (a) requires the state permitting authority to

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send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, Section 505 (a) also requires the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. Section 505 (b) provides for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and submit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under section 505 (d), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505 (e) allows the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

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

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution—Permit Fee Requirements.** The purpose of the proposed action is to develop a regulation to meet the permit fee requirements of Title V of the Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 19, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal and state statutory requirements. Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

One of the requirements of Title V is for states to develop permit fee programs to use in funding the costs of developing, implementing and enforcing the other requirements of Title V. The permit fees obtained should fund the resources necessary for states to carry out their programs. The basis of the required permit fees is a charge per ton of emissions of regulated pollutants emitted by stationary sources covered under Title V. While the permit fee program provides a benefit to state agencies, the program also provides other benefits related to air quality. Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible. The charging of permit fees also more directly allows the costs of the air quality programs to be paid for by those who create the pollution, rather than indirectly through the state taxation system.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. In addition to requiring that states develop operating permit programs, Congress is also requiring that states develop permit fee programs to pay for the cost of the programs.

Notices of Intended Regulatory Action

Section 502 (b)(3) sets out the minimum elements that must be included in each permit fee program. The owner or operator of all sources subject to the requirement to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the costs of the small business technical assistance program. Section 502 (b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.
2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.
3. Emissions and ambient monitoring.
4. Preparing generally applicable regulations or guidance.
5. Modeling, analyses, and demonstrations.
6. Preparing inventories and tracking emissions.

Section 502 (b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.
2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).
3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.
4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than \$25 per ton of each regulated pollutant will meet the requirements of 502 (b)(3)(A).
5. The fee calculated under paragraph 1 above shall be increased consistent with the need to cover the reasonable costs authorized by 502 (b)(3)(A) in each year beginning after the year of the enactment of the

Act by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502 (b)(3)(C) specifies the requirements of a permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself.

Section 507 (f) concerning fees and the Small Business Technical Assistance Program specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

Section 408 (c)(4) of Title IV concerning sources of acid deposition states that Phase I affected units shall not be required to pay permit fees during the years 1995 through 1999.

The Department has the statutory authority under state law to develop a Title V permit fee program. Section 10.1-1322 of the Air Pollution Control Law of Virginia specifies the supplementary requirements for developing the Title V fee program in Virginia.

Section 10.1-1322 B specifies that the board may require the payment and collection of annual permit program fees for air pollution sources. The law directs that the fees must be based on actual emissions of each regulated pollutant as defined in Section 502 of the Act, in tons per year. The law stipulates that the regulation cannot charge for emissions in excess of 4,000 tons per year of each pollutant for each source. The law restricts the program to obtaining a base year amount of \$25 per ton, using 1990 as the base year. It does allow annual adjustments of this amount using the Consumer Price Index, as directed in Section 502 (b)(3)(B). The fees obtained are to approximate the direct and indirect costs of the program as directed in Section 502 (b)(3)(A).

When adopting regulations for these fees, the board is directed to take into account permit fees charged in neighboring states so that existing or prospective industry in Virginia will not be placed at an economic disadvantage.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Kathleen Sands, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone 225-2722.

Notices of Intended Regulatory Action

BOARD FOR COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider promulgating regulations entitled: **Virginia Board for Cosmetology Esthetician/Skin Care Regulations**. The purpose of the proposed action is to regulate the practice of invasive skin care performed by estheticians who administer cosmetic treatments.

Statutory Authority: § 54.1-1202 of the Code of Virginia.

Written comments may be submitted until December 5, 1992.

Contact: Demetra Kontos, Assistant Director, Cosmetology Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8509.

BOARD OF DENTISTRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations**. The purpose of the proposed action is to consider the following amendments:

1. The Public Participation Guidelines - § 1.2 D.
2. Certification of dental assistants for Schedule VI topical medicinal agents - §§ 1.4 M and 5.4 1 (Emergency Regulation).
3. Reinstatement Fees and Procedures - § 1.3 D.
4. Reinstatement procedure following suspension or revocation of license and fee.
5. Licensure examinations - grace period for licensure - § 2.2 A and B.
6. Reciprocal licensure for dentists - § 2.3 A.
7. Endorsement for dentists.
8. Clarification of § 3.1 A 2 regarding educational requirements to administer general anesthesia.
9. Requirement for dentists to keep all insurance claim forms - § 4.1 B 6.
10. Regulation of dental hygiene, except level of supervision.
11. Controlled use of trade names.

12. Advertisement, claiming to be a specialist - § 4.4 F 4.

13. Develop Continuing Education requirements for dentists and dental hygienists.

14. Other minor clarifications and nonsubstantive changes.

Virginia Board of Dentistry Regulatory - Legislative Committee will meet on November 21, 1992, to discuss and recommend changes to the regulation of dentistry and dental hygiene.

Statutory Authority: §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005, telephone (804) 662-9906.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider promulgating regulations entitled: **Resident Trainee Program for Funeral Services**. The purpose of the proposed action is to limit the length of time that a trainee can remain in the program.

Statutory Authority: § 54.1-2817 of the Code of Virginia.

Written comments may be submitted until October 31, 1992.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804)662-9907.

BOARD FOR GEOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations of the Board for Geology**. The purpose of the proposed action is to review regulatory content and fees.

Statutory Authority: §§ 54.1-1400 through 54.1-1405 of the Code of Virginia.

Notices of Intended Regulatory Action

Written comments may be submitted until November 20, 1992.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-18-000. Waterworks Regulations - Synthetic Organic/Inorganic Chemicals.** The purpose of the proposed action is to make appropriate amendments to make state regulations as stringent as federal Phase V (synthetic organic chemicals and inorganic chemicals).

Statutory Authority: § 32.1-170 of the Code of Virginia.

Written comments may be submitted until October 23, 1992.

Contact: Allen R. Hammer, P.E., Division Director, Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-5566.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia State Medical Facilities Plan.** The purpose of the proposed action is to revise the State Medical Facilities Plan to provide guidance for assessing the public need for projects subject to review according to the 1992 amendments to the Certificate of Public Need Law.

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

Written comments may be submitted until November 19, 1992.

Contact: Paul E. Parker, Director, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need (COPN) Rules and Regulations.** The purpose of the

proposed action is to amend the existing certificate of public need regulations to be consistent with the 1992 amendments to the COPN law.

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

Written comments may be submitted until November 19, 1992.

Contact: Wendy V. Brown, Project Review Manager, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-4. Virginia Amusement Device Regulations/1990.** The purpose of the proposed action is to receive public input prior to developing regulations for Bungee Jumping as part of the Amusement Device Regulations.

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

Written comments may be submitted until November 13, 1992.

Contact: Carolyn Williams, Building Code Supervisor, The Jackson Center, 501 North 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Apprenticeship Council intends to consider amending regulations entitled: **VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.** The purpose of the proposed action is to establish regulations on the numeric ratio of apprentices to journeymen on worksites covered by the Davis-Bacon and related federal prevailing wage laws.

The Department of Labor and Industry requests comments on the following sample language concerning the numeric ratio of apprentices to journeymen.

1. APPRENTICESHIP RATIO. Effective June 1, 1989,

Notices of Intended Regulatory Action

the minimum numeric ratio of apprentices to journeymen shall be 1:1 except as noted in (2) of these regulations, below; these provisions are nonseverable. Individual program sponsors shall propose, as part of their apprenticeship standards, a ratio of apprentices to journeymen consistent with proper supervision, training, safety and continuity of employment, applicable provisions in collective bargaining agreements, and applicable requirements of recognized licensing boards or authorities.

APPRENTICESHIP RATIO ON DAVIS-BACON WORKSITES. Effective July 1, 1993, the minimum numeric ratio of apprentices to journeymen for individual program sponsors and for individual contractors signatory to joint and nonjoint apprenticeship programs performing work under the Davis-Bacon and related federal prevailing wage laws shall be worksite-specific and shall be as follows:

- one apprentice to the first journeyman;
- two apprentices to the first two journeymen;
- two apprentices to the first three journeymen;
- two apprentices to the first four journeymen; and
- one additional apprentice for each two journeymen thereafter.

The ratio for service trucks on Davis-Bacon worksites shall be one apprentice to one journeyman.

Bids submitted for Davis-Bacon work on or after July 1, 1993, must observe these minimum ratio requirements.

These ratio provisions shall apply until either the Congress of the United States or the U.S. Department of Labor mandate different or uniform ratios for Davis-Bacon work.

3. OTHER REQUIREMENTS RELATED TO DAVIS-BACON WORKSITES: Sponsors must notify the Virginia Apprenticeship Council within 30 days of receipt of a citation alleging violation of the Davis-Bacon Act affecting an apprentice. The notice must be in a form specified by the policies of the Apprenticeship Council. Failure to report citations shall be an omission for which council may consider requiring a remedial action plan or deregistration of the sponsor's program.

The Apprenticeship Council may deregister sponsors who receive final orders of the U.S. Department of Labor or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.

Statutory Authority: § 40.1-118 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: R.S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2381.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1940. Methods and Standards for Establishing Payment of Rates - Long Term Care: Nursing Home Payment System.** The purpose of the proposed action is to promulgate permanent regulations to supersede the existing emergency regulation which provides for the same policy.

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

Written comments may be submitted until November 2, 1992, to Shelley Platt, Hearing Officer, Division of Cost Settlement and Audit, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.** The purpose of the proposed action is to promulgate permanent regulations that remove Medicare cap for physician services fees.

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

Written comments may be submitted until November 2, 1992, to Scott Crawford, Reimbursement Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending

Notices of Intended Regulatory Action

regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services:** The purpose of the proposed action is to promulgate permanent regulations to discontinue coverage of Minoxidil.

786-7933.

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

Written comments may be submitted until November 2, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Client Appeals** The purpose of the proposed action is to promulgate permanent regulations to take the timeframes required for ALJ review outside of timeframes for the handling of client appeals. The permanent regulations will also contain other minor changes.

Statutory Authority § 32.1-325 of the Code of Virginia

Written comments may be submitted until November 2, 1992, to Tom Czelusta, Sr. Admin. Law Judge, Division of Client Appeals, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Cost Sharing (copayments) Obligations for Recipients.** The purpose of the proposed action is to promulgate permanent regulations to equitably apply copay policies on rehabilitative services.

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

Written comments may be submitted until November 2, 1992, to Betty Cochran, Director, Division of Quality Care Assurance, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Criteria for Pre-Admission Screening and Continued Stay; Noncovered Services Under Home Health Services.** The purpose of the proposed action is to: (i) clarify the requirements and the process for determining that long-term care criteria are and continue to be met; (ii) clarify services which have not been and continue to not be covered under home health; and (iii) make other technical corrections consistent with previous regulatory actions.

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

Written comments may be submitted until November 2, 1992, to Mary Chiles, Manager, Division of Quality Care Assurance, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to (i) amend §§ 4.1 B 4 and 4.1 C 4 by deleting "more than"; (ii) delete the untitled statement following § 2.2 3 D 6 as not being applicable; and (iii) establish a fee to take the United States Medical Licensing Examination.

Statutory Authority § 54.1-2900 of the Code of Virginia.

Written comments may be submitted until November 19, 1992, to Hilary H. Connor, M.D., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005.

Contact: Eugenia A. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

REAL ESTATE BOARD

† Notice of Intended Regulatory Action

Notices of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-3. Virginia Real Estate Time-Share Regulations.** The purpose of the proposed action is to review and seek public comment on the registration and disclosure requirements of time-share offered or disposed of in the Commonwealth of Virginia. Other changes to the regulations which may be necessary will be considered.

Statutory Authority § 55-396 of the Code of Virginia.

Written comments may be submitted until November 20, 1992.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8510.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **VR 615-01-47. Disability Advocacy Project.** The purpose of the proposed regulation is to adopt for statewide implementation the Disability Advocacy Project included in emergency regulation VR 615-01-47.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until November 4, 1992, to Ms. Diana Salvatore, Program Manager, Medical Assistance Unit, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Virginia 23229.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-0899, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled **VR 615-34-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Contracting Organizations.** The purpose of the proposed action is to set forth the requirements for organizations that shall administer the voluntary registration program for small family day care homes on behalf of the Commissioner of Social Services.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Written comments may be submitted until October 21,

1992.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled **VR 615-35-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Providers.** The purpose of the proposed action is to set forth registration procedures and general information for providers operating small family day care homes who voluntarily register.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Written comments may be submitted until October 21, 1992.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to conduct the triennial review of water quality standards as required by federal and state law. As part of this triennial review, public meetings are being held to receive comments and suggestions which the State Water Control Board will consider in proposing specific changes in the standards that will be formally considered at public hearings during 1993.

The type of information which would help the board conduct this review includes information on the following Environmental Protection Agency requirements:

- information to update existing standards or to add new standards (especially for toxic pollutants),
- suggestions for a narrative biological criteria,
- evaluations of the 1986 Environmental Protection Agency's bacteria and dissolved oxygen criteria, and
- provisions to ensure that standards apply to wetlands and appropriate numeric criteria for wetlands.

In addition, staff will be considering nominations

Notices of Intended Regulatory Action

previously received for water bodies to be included as exceptional waters under VR 680-21-01.3 C as well as seeking additional recommendations for this category. The nominations received thus far include the Rappahannock River from the headwaters to its confluence with Carter's Run, the Rappahannock River from the head of Kelly's Ford rapids to its confluence with Mott's Run and the Maury River from Goshen to Rockbridge Baths.

Finally, any other information which may indicate that modifications are necessary in other sections of the regulation will also be considered.

Any amendments to the water quality standards proposed as a result of this triennial review have the potential to impact every VPDES permit holder in the Commonwealth of Virginia. The impact on an individual VPDES permit hold would range from additional monitoring costs through upgrades to existing wastewater treatment facilities.

The board will hold six public meetings to receive views and comments and to answer questions of the public. (See Calendar of Events Section).

Applicable laws and regulations include § 303(c)(2)(B) and § 307(a) of the Clean Water Act, State Water Control Law, VR 680-21-00 (Water Quality Standards Regulation) and VR 680-14-01 (Permit Regulation).

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

Written comments may be submitted until November 16, 1992.

Contact: Eleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5091.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: VR 460-01-74. Drug Utilization Review Program (§ 4.26).
VR 460-04-4.2600. Drug Utilization Review Program Regulations.

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

Public Hearing Date: N/A - Written comments may be submitted through December 18, 1992.

(See Calendar of Events section for additional information)

Summary:

The purpose of this proposal is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving outpatient drugs who do not reside in a nursing home. Currently, the Commonwealth does not have a DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and, often, inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

OBRA 90 § 4401 placed four key DUR requirements on DMAS:

- implementation of a retrospective DUR
- provision for prospective DUR before the dispensing of prescriptions
- establishment of a DUR board
- development of physician and pharmacist

educational interventions and programs.

Retrospective DUR focuses on the therapeutic outcomes of pharmaceutical services. Retrospective DUR applies clinical, therapeutically oriented criteria to pharmacy paid claims data in order to identify potential drug therapy problems (patients whose drug therapy relates to increased risk for drug-induced illnesses) in Medicaid clients. Once a potential problem has been identified in an individual, the physician and/or pharmacist involved in the patient's drug therapy will be notified and provided with an explanation of why a potential drug therapy problem is thought to exist. It will then be up to the patient's physician and pharmacist to cooperatively modify the patient's drug therapy regimen if such modification is deemed appropriate.

Prospective DUR recognizes and utilizes the pharmacist's ability to maximize therapeutic outcomes. As part of the prospective DUR requirements, the pharmacist is required to review patients' complete drug therapy before each prescription is filled. During the review of drug therapy, pharmacists will be responsible for screening for potential drug therapy problems, utilizing their knowledge as trained professionals and supported by computer-assisted data bases of clinical manuals approved by the Commonwealth's DUR Board.

The federal law established minimum requirements for patient consultation each time a prescription is dispensed, consistent with the pharmacist's professional judgment and applicable state laws. Pharmacists are also required to make a reasonable effort to maintain patient medical history profiles.

OBRA 90 required DMAS to appoint a DUR board. The DUR Board is a group of health care professionals consisting of pharmacists, physicians, and nurses. The board will recommend therapeutic criteria for the retrospective and the prospective DUR program for approval by BMAS and will be active in the design of the educational intervention programs. Currently, the Virginia Medicaid DUR Board consists of 13 members: 5 pharmacists, 6 physicians, and 2 nurses.

The last major requirement of OBRA 90 is that DMAS develop an educational intervention program for physicians and pharmacists. The DUR Board is responsible for identifying common drug therapy problems and DMAS is responsible for developing programs to educate physicians and pharmacists about

these problems. Educational interventions can be accomplished through face-to-face discussions with practitioners or through written, oral or electronic reminders.

VR 460-01-74. Drug Utilization Review Program (§ 4.26).

Citation: 1927(g)

4.26: Drug Utilization Review Program

The Medicaid agency meets the requirements of Section 1927(g) of the Act for a drug use review (DUR) program for outpatient drug claims.

Citation: 1927(g)(1)(A)

The DUR program assures that prescriptions for outpatient drugs are:

- Appropriate
- Medically necessary
- Are not likely to result in adverse medical results

The DUR program is designed to educate physicians and pharmacist to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacist, and patients or associated with specific drugs as well as:

- Potential and actual adverse drug reactions
- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- Drug interactions
- Incorrect drug dosage or duration
- Drug allergy interactions
- Clinical abuse/misuse

1927(g)(1)(B)

The DUR program shall assess data against predetermined standards consistent with:

- The peer reviewed medical literature
- Three compendia specified by the statute

Citation: 1927(g)(1)(D)

DUR is not required for drugs dispensed to residents of nursing facilities that are in compliance with drug regimen review procedures set forth in 42 CFR 483.60. DUR is required for drugs dispensed to residents of nursing facilities which are not in compliance with 42 CFR 483.60.

Citation: 1927(g)(2)(A)

The DUR program includes prospective review of drug therapy at the point of sale before each prescription is filled or delivered to the Medicaid recipient.

Citation: 1927(g)(2)(A)(i)

Prospective DUR includes screening for potential drug therapy problems due to:

- Therapeutic duplication
- Drug disease contraindications
- Drug interactions
- Incorrect dosage or duration
- Drug allergy interactions
- Clinical abuse/misuse

Citation: 1927(g)(2)(A)(ii)

Prospective DUR includes counseling for Medicaid recipients based on standards established by State law and maintenance of patient profiles.

Citation: 1927(g)(2)(B)

The DUR program includes retrospective DUR through its mechanized drug claims processing and information retrieval system or otherwise which undertakes ongoing periodic examination of claims data and other records to identify:

- Patterns of fraud and abuse
- Gross overuse
- Inappropriate or medically unnecessary care

Citation: 1927(g)(2)(C)

The DUR program assesses data on drug use against explicit predetermined standards including but not limited to monitoring for:

- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- Drug interactions
- Incorrect dosage/duration
- Clinical abuse/misuse

Citation: 1927(g)(2)(D)

The DUR program through its State DUR Board, using data provided by the Board, provides for active and ongoing educational outreach programs to educate practitioners on common drug therapy problems to improve prescribing and dispensing practices.

Citation: 1927(g)(3)(A)

The DUR program has established a State DUR Board either:

- Directly
- Contract with a private organization

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Citation: 1927(g)(3)(B)

☒ The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacist and one-third but no more than 51 percent licensed and actively practicing physicians) with knowledge and experience in:

- Clinically appropriate prescribing and dispensing of covered outpatient drugs.
- Monitoring of covered outpatient drugs.
- Drug use review, evaluation and intervention.
- Medical quality assurance.

Citation: 1927(g)(3)(C)

☒ The activities of the DUR Board include:

- Retrospective DUR
- Application of Standards
- Ongoing interventions for physicians and pharmacists targeted toward therapy problems or individuals identified in the course of retrospective DUR
- Interventions include in appropriate instances:
 - Information dissemination
 - Written, oral, and electronic reminders
 - Face to Face discussions
 - Intensified monitoring/review of providers/dispensers

Citation: 1927(g)(3)(D)

☒ An annual report is submitted, *no later than March 31 of each year*, to the Secretary, including a report from its DUR Board, on the DUR program.

The Medicaid agency ensures that predetermined criteria and standards have been recommended by the DUR Board and approved by the BMAS and that they are based upon documentary evidence of the DUR Board. The activities of the DUR Board and the Medicaid fraud control programs are and shall be maintained as separate. The DUR Board shall refer suspected cases of fraud or abuse to the appropriate fraud and abuse control unit within the Medicaid agency.

VR 460-04-4.2600. Drug Utilization Review Program Regulations.

§ 1. Definitions.

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

“Abuse” means (i) use of health services by recipients which is inconsistent with sound fiscal or medical practices and that results in unnecessary costs to the Virginia Medicaid program or in reimbursement for a level of use or a pattern of services that is not medically necessary, or

(ii) provider practices which are inconsistent with sound fiscal or medical practices and that result in (a) unnecessary costs to the Virginia Medicaid program, or (b) reimbursement for a level of use or a pattern of services that is not medically necessary or that fails to meet professionally recognized standards for health care.

“Appropriate and medically necessary” means drug prescribing and dispensing practices which conform with the criteria and standards developed pursuant to this regulation and are consistent with the diagnosis or treatment of an identified condition.

“Criteria and standards” means predetermined objective tests established by or approved by the Drug Utilization Review Board for use in both retrospective and prospective screening of the quality and appropriateness of pharmacy services for Medicaid recipients. Objective tests shall include both criteria, which are based upon professional expertise, prior experience, and the professional literature with which the quality, medical necessity, and appropriateness of health care services may be compared, and standards, which are professionally developed expressions of the range of acceptable variation from a criterion.

“Code” means the Code of Virginia.

“DMAS” means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

“Director” means the Director of the Department of Medical Assistance Services.

“Drug Use Review (DUR)” means a formal continuing program for assessing medical and recipients’ drug use data against explicit standards and criteria and, as necessary, introducing remedial strategies.

“Drug Utilization Review Board (DUR Board)” means the group of health care professionals appointed by the director and established pursuant to § 1927(g)(3) Title XIX of the Social Security Act.

“Drug Utilization Review Committee (DUR Committee)” means a committee composed of health care professionals who make recommendations for developing and modifying drug therapy review standards or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.

“Exceptional drug use pattern” means a pattern of drug use that differs from the standards and criteria established pursuant to these regulations.

“Fraud” means any act including intentional deception or misrepresentation that constitutes fraud under applicable federal or state laws.

“OBRA 90” means the Omnibus Budget Reconciliation

Act of 1990.

"Patient's agent" means the person or persons selected by the recipient to act on his behalf with regard to the recipient's receipt of Title XIX pharmacy services.

"Patient counseling" means communication of information by the pharmacist, in person whenever practicable, to patients receiving benefits under Title XIX of the Social Security Act or the patient's agent, to improve therapeutic outcomes by encouraging proper use of prescription medications and devices.

"Prospective drug utilization review" means a review by the pharmacist of the prescription medication order and the patient's drug therapy before each prescription is filled. The review shall include an examination of any patient profile (which has been maintained by the pharmacist) to determine the possibility of potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse).

"Restriction" means (i) an administrative limitation imposed by DMAS on a recipient which requires the recipient to obtain access to specific types of health care services only through a designated primary provider or (ii) an administrative limitation imposed on a provider to prohibit participation as a designated primary provider, referral provider, or covering provider for restricted recipients.

"Retrospective drug use review" means the drug use review process that is conducted by DMAS using historic or archived medical or drug use data which may include but is not restricted to patient profiles and historical trends.

§ 2. Authority.

Section 1927 of Title XIX Social Security Act provides the authority for this program.

§ 3. Scope and purpose.

A. DMAS shall implement and conduct a drug use review program (DUR program) for covered drugs prescribed for eligible recipients. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause medically adverse events. The program shall provide for ongoing retrospective DUR, prospective DUR and an educational outreach program to educate practitioners on common drug therapy problems with the aim of improving prescribing practices. The primary objectives shall be:

1. Improving in the quality of care;

2. Maintaining program integrity (i.e., controlling problems of fraud and benefit abuse); and

3. Conserving program funds and individual expenditures.

B. Certain organized health care settings shall be exempt from the further requirements of retrospective and prospective DUR process as provided for in § 4401 of OBRA 90.

C. The purpose of retrospective drug utilization review shall be to screen for:

1. Monitoring for therapeutic appropriateness;
2. Overutilization and underutilization;
3. Appropriate use of generic products;
4. Therapeutic duplication;
5. Drug-disease contraindications;
6. Drug/drug interactions;
7. Incorrect drug dosage or duration of treatment;
8. Clinical abuse/misuse and fraud, and as necessary; and
9. Introduce to physicians and pharmacists remedial strategies to improve the quality of care rendered to their patients.

D. The purpose of prospective drug utilization review shall be to screen for:

1. Potential drug therapy problems due to therapeutic duplication;
2. Drug-disease contraindications;
3. Drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs);
4. Incorrect drug dosage or duration of drug treatment;
5. Drug-allergy interactions; and
6. Clinical abuse and misuse.

§ 4. Retrospective DUR.

A. The retrospective DUR program shall provide, through drug claims processing and information retrieval systems, for ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals

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receiving benefits under Title XIX of the Social Security Act.

B. The DUR program shall, on an ongoing basis, assess data on drug use against predetermined criteria and standards which have been approved by the DUR Board.

C. Summary data concerning identified exceptional drug utilization patterns shall be developed and submitted by DMAS to the DUR Board at least quarterly, or as often as monthly if requested by the DUR Board. This data shall include at least a summary of the drug therapy problems most often observed in the course of retrospective reviews, summaries of physician responses to educational interventions, and the results of intensified reviews and monitoring of selected prescribers or dispensers.

§ 5. Prospective DUR.

A. Patient medication profiles.

On and after January 1, 1993, pharmacists shall make a reasonable effort to maintain a patient medication record system for persons covered under Title XIX of the Social Security Act for whom prescriptions are dispensed. For purposes of this regulation, a reasonable effort shall have been made if the information set forth in subdivision 1 of this subsection is requested from the patient or the patient's agent.

1. A reasonable effort shall be made by the participating pharmacist to obtain, record, and maintain at least the following information on each patient's profile:

- a. Name, address, telephone number;
- b. Date of birth (or age) and gender;
- c. Medical history

(1) Significant patient health problems known to the pharmacist,

(2) Prescription drug reactions or allergies,

(3) A comprehensive list of prescription and nonprescription medications and legend drug administration devices known by the pharmacist to have been used by the patient; and

d. Pharmacist's comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.

2. Such information may be recorded in any system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. In the absence of a pharmacist's voluntarily maintaining records of patients' acceptance of counseling, DMAS is

authorized to and shall survey pharmacists' patients in order to determine compliance with and report on the mandates of federal and state law and regulations.

3. The information for patient profiles may be obtained from a patient's prescribing physician, hospital medical records, interviews with the patient, patient's family or agent, or a combination of the above.

4. Patient medication profiles shall be maintained for a period of not less than two years from the date of last entry or as necessary to comply with state or federal law.

B. Pharmacists' responsibilities under prospective DUR.

1. Upon receipt of each prescription and before dispensing the medication, a pharmacist shall perform prospective DUR, consistent with § 54.1-3319 A of the Code, based on his professional knowledge and the criteria and standards approved by the DUR Board, using the information contained in the patient's profile.

2. Each pharmacy is required to have DMAS' DUR Board approved criteria readily available for pharmacists to use in performing prospective DUR.

C. Patient counseling.

1. Consistent with § 54.1-3319 B of the Code, a pharmacist or pharmacy intern must offer to discuss with each individual receiving benefits or the caregiver of such individual, matters which in the exercise of the pharmacist's or pharmacy intern's professional judgment are deemed to be significant. An offer to discuss shall be in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls.

2. The specific areas of counseling shall include, but shall not be limited to:

a. Name and description of the medication;

b. Dosage form and amount, route of administration, and duration of therapy;

c. Special directions for preparation, administration and use by the patient as deemed necessary by the pharmacist;

d. Common or severe side or adverse effects or interactions that may be encountered which may interfere with the proper use of the medication as was intended by the prescriber, and the action required if they occur;

e. Techniques for self-monitoring drug therapy;

f. Proper storage;

g. Prescription refill information;

h. Action to be taken in the event of a missed dose.

3. Alternative forms of patient information may be used to supplement, but not replace, oral patient counseling.

4. A pharmacist shall not be required to provide oral consultation when a patient or a patient's agent refuses the pharmacist's attempt to consult.

5. When prescriptions are delivered to the patient or patient's agent who resides outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll free telephone number or accept collect calls from such patient or patient's agent.

6. Patient counseling as described herein shall also be required for outpatients of hospitals and institutions when medications are dispensed upon the patient's discharge from the hospital or institution.

7. Patient counseling as described in this regulation shall not be required for inpatients of a hospital or institution where a nurse or other person authorized by the Commonwealth is administering the medication.

D. Compliance monitoring for prospective DUR.

1. An ongoing program shall be developed for the purpose of monitoring pharmacists' compliance with the prospective DUR requirements of these regulations.

2. The director may establish the compliance monitoring program through agreements with other state agencies, the DUR Board or other organizations.

3. As determined to be appropriate by DMAS, the methods used to monitor compliance shall include but shall not be limited to:

a. On-site inspections,

b. Patient surveys,

c. Desk audits, or

d. Retrospective pharmacy profile reviews.

§ 6. Criteria and standards for DUR.

A. The DUR Board shall establish and revise as necessary a list of approved criteria and standards which shall be consistent with the following:

1. Compendia which shall consist of at least the (i) American Hospital Formulary Service Drug Information, (ii) United States Pharmacopeia-Drug

Information, (iii) American Medical Association Drug Evaluations;

2. The peer-reviewed medical literature; and

3. Commonly accepted standards of medical practice as used by practitioners across the Commonwealth.

§ 7. Educational program.

A. DMAS shall develop an educational program designed to further educate physicians and pharmacists to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. The purpose of such program shall be to:

1. Identify and reduce the frequency of patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs;

2. Identify and reduce the potential and actual severe adverse reactions to drugs; and

3. Improve prescribing and dispensing practices.

Such program shall include education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse/misuse.

B. The educational program shall be accomplished through the use of interventions. The interventions shall be directed to physicians and pharmacists and shall address therapy problems or individuals identified in the course of retrospective drug use reviews as having exceptional drug utilization patterns. The educational program shall have at least four types of interventions which shall be used as appropriate. These interventions shall include:

1. Information dissemination sufficient to ensure the ready availability to participating physicians and pharmacists of information concerning the DUR Board's duties, powers, and basis for its standards;

2. Written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, which is communicated in a manner designed to ensure the privacy of patient-related information;

3. Face-to-face discussions between health care professionals who are experts in appropriate and medically necessary drug therapy and selected prescribers and pharmacists who have been targeted for intervention, including discussion of optimal

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prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

4. Intensified review or monitoring of selected prescribers or dispensers.

C. DMAS may establish the educational program through contracts with accredited health care educational institutions, state medical societies or state pharmacists associations/societies or other organizations. The educational program will use, but not be limited to, as a basis for its educational activities the compendia and literature referenced in these regulations and data obtained primarily from the retrospective DUR process, and provided by the DUR Board, on common drug therapy problems and other utilization and drug therapy issues listed in these regulations. The educational program shall be based on recommendations submitted by the DUR Board.

D. A report shall be prepared by the DUR Board and submitted to the director at least semi-annually evaluating the success of the interventions, determining if the interventions improved the quality of drug therapy, and making recommendations for modifications in the program, if appropriate.

§ 8. DUR Board

A. The Director of DMAS shall establish the DUR Board either directly or through a contract with an outside vendor. The DUR Board shall submit recommendations on prospective and retrospective drug use review to the director. The director reserves the right to reject such recommendations and shall so notify the board consistent with federal requirements. The DUR Board shall adhere to all the requirements of client confidentiality with respect to patient specific information.

B. The DUR Board shall consist of 13 members. At least one-third of the members shall be pharmacists. At least one-third but no more than 51% of the members shall be physicians. There shall be at least one but no more than two nurse practitioner members. All pharmacist, physician and nurse practitioner members shall be licensed by the Commonwealth with such licenses in good standing. The Director of DMAS shall invite submission of candidates from each of these groups. Other individuals and groups interested in submitting names of candidates for the DUR Board shall indicate their interest to the director in writing. The director shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The director shall appoint the pharmacist members from candidates submitted by the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association, Virginia Chain Drug Store Association, and the Virginia Society of Consultant Pharmacists. The director shall appoint the nurse practitioner member or members from candidates

submitted by the Virginia Nurses Association.

1. At least five of the physicians and pharmacists appointed to the DUR Board shall be licensed and actively practicing.

2. All individuals appointed to the DUR Board shall demonstrate knowledge and expertise in one or more of the following areas:

- a. The clinically appropriate prescribing of covered outpatient drugs;
- b. The clinically appropriate dispensing and monitoring of outpatient drugs;
- c. Drug use review, evaluation, and intervention; and
- d. Medical quality assurance.

C. Consistent with its by-laws, the DUR Board members shall serve at the pleasure of the director, for terms established by the director. Vacancies shall be filled in the same manner as the original appointment.

D. DMAS shall provide staff assistance to the DUR Board and its officers in the routine conduct of its business.

E. The DUR Board shall have the following duties:

1. The DUR Board shall meet no less than quarterly and, in addition, upon call by the director. A quorum for action by the DUR Board shall be seven voting members.

2. The DUR Board shall elect from among its members a chairperson and a vice-chairperson. Officers may be elected to successive terms.

3. A full record of the board's proceedings shall be kept. The record shall be open to public inspection at all reasonable times consistent with the DMAS' hours of operation.

4. The DUR Board shall establish such rules as are necessary to conduct its business.

5. The DUR Board shall review and approve the retrospective DUR criteria for consistency with the requirements set forth in these regulations.

6. The DUR Board shall establish a listing of criteria and standards for use in prospective drug use reviews. The criteria and standards may include commercial software packages, drug interaction handbooks, and other published and written criteria.

7. The DUR Board shall submit a report at least semi-annually evaluating the success of interventions and making recommendations for modifications to the

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educational program, if appropriate. The DUR Board shall evaluate the educational program developed by DMAS or DMAS' vendor pursuant to the requirements of these regulations and make recommendations concerning the appropriate mix of intervention approaches.

8. The DUR Board shall prepare a report on an annual basis for submission to the U.S. Secretary of Health and Human Services and the director which shall include a description of the activities of the DUR Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of the interventions on quality of care, and an estimate of the cost savings generated as a result of such program.

§ 9. DUR Committee.

A. The director shall provide for the establishment of a DUR Committee either directly or through a contract with an outside vendor. The DUR Board may serve as the DUR Committee.

B. The membership of the DUR Committee shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

1. The clinically appropriate prescribing of covered drugs;
2. The clinically appropriate dispensing and monitoring of covered drugs;
3. Drug use review, evaluation, and intervention; and
4. Medical quality assurance.

C. The membership of the DUR Committee shall include physicians, pharmacists, and other health care professionals.

D. Activities of the DUR Committee shall include, but not be limited to, the following:

1. The review of patient, pharmacist, and physician exceptional drug utilization profiles generated from retrospective reviews applying knowledge and experience as a professional and the retrospective criteria and standards approved by the DUR Board;
2. Develop and recommend modifications to the prospective and retrospective standards based on clinical experience, new literature findings, and communications from practitioners pursuant to the educational program;
3. In instances where an exceptional drug use pattern is suggestive of fraud or abuse, make referrals in a manner consistent with the rules adopted by the DUR

Board to the appropriate intra agency division;

4. Provide technical expertise to assist DMAS staff in the compilation of reports and recommendations to be presented to the DUR Board and the director.

E. The DUR Committee shall adhere to all the requirements of client confidentiality with respect to patient specific information.

§ 10. Exemption of organized health care settings.

A. Covered outpatient drugs dispensed by health maintenance organizations, including those organizations that contract under § 1903(m) of the Act, are not subject to the requirements of this section.

B. A hospital (providing medical assistance under the Commonwealth's plan) that dispenses covered outpatient drugs using drug formulary systems, and bills DMAS no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this regulation.

§ 11. Medical quality assurance for nursing facility residents.

Documentation of drug regimens shall, at a minimum:

1. Be included in a plan of care that must be established and periodically reviewed by a physician;
2. Indicate all drugs administered to the resident in accordance with the plan with specific attention to frequency, quantity, and type; and identify who administered the drug (including full name and title); and
3. Include the drug regimen review prescribed for nursing facilities in regulations implementing Section 483.60 of Title 42 of the Code of Federal Regulations.

DEPARTMENT OF STATE POLICE

Title of Regulation: VR 545-00-01. Public Participation Policy.

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4 and 54.1-4009 of the Code of Virginia.

Public Hearing Date: N/A -- Written comments may be submitted until December 18, 1992.

(See Calendar of Events section for additional information)

Summary:

The proposed regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantive changes to

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present regulations. The agency will mail a notice of proposed regulatory action to known interested parties.

VR 545-00-01. Public Participation Policy.

§ 1. Policy.

It is the policy of the Department of State Police to seek public participation when proposing regulations or substantial changes to present regulations.

§ 2. Guidelines.

A. When the Department of State Police proposes regulations or substantial changes to present regulations, a notice of intent will be published in *The Virginia Register*. The notice will request input from interested parties and will contain information as outlined in the *Virginia Register Form, Style and Procedure Manual*.

B. The Department of State Police will mail a notice of proposed regulatory action to known interested parties and add to the mailing list as groups and individuals express an interest in the agency's regulatory activities.

The notice of proposed regulatory action shall include:

1. Subject of proposed regulation;
2. Purpose of proposed regulation;
3. Request for comments from interested parties;
4. Name, address, and telephone number of contact person; and
5. Date for submission of comments by interested parties.

C. The agency shall file a "Notice of Comment Period" and its proposed regulations with the Registrar of Regulations as required by § 9-6.14:7.1 of the Code of Virginia. Such notice shall establish the last date on which written comments will be accepted from interested parties.

D. Final regulations shall be published in *The Virginia Register* and shall become effective 30 days after publication.

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-3-442. Consolidated and Combined Returns.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: December 1, 1992 - 10 a.m.

Written comments may be submitted until December 18, 1992.

(See Calendar of Events section

for additional information)

Summary:

The procedure to be utilized by affiliated groups of this nature in computing a consolidated Virginia apportionment factor is shown. Each one factor affiliated group member takes its apportionment percentage utilizing the one factor apportionment method, and multiplies it by its property, payroll, and sales denominator in order to compute the Virginia portion of these items. This has the effect of computing a proforma three factor formula for each one factor affiliate. With a proforma three factor formula, the one factor affiliates' apportionment results may be utilized in computing the consolidated apportionment factor.

VR 630-3-442. Consolidated and Combined Returns.

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B. Overview.

In the first year two or more members of an affiliated group of corporations, as defined in Va. Code § 58.1-302 of the Code of Virginia, are required to file Virginia returns, the group may elect to file separate returns, a consolidated return or a combined return. All returns for subsequent years must be filed on the same basis unless permission to change is granted by the Department of Taxation. The group may elect to file on a basis different from its federal return(s). Other members of the affiliated group of corporations which become subject to Virginia income tax in subsequent years must conform to the initial election made by the group unless permission to change is granted by the department.

C. Affiliate.

Corporations actually included in a consolidated federal return shall be presumed to satisfy the ownership criteria of the definition of "affiliated" in § 58.1-302 of the Code of Virginia and VR 630-3-302. A corporation included in a federal consolidated return but which is not subject to Virginia income tax is not an affiliate for Virginia purposes.

D. Federal taxable income.

1. When the affiliated group files federal and Virginia returns on a different basis, or files a federal consolidated return including corporations which are not subject to Virginia income tax, the "federal taxable income" for Virginia purposes of the affiliated group and of each member of the group shall be computed in accordance with the following principles:

a. If the affiliated group files a consolidated Virginia return:

(1) The federal taxable income (before and after deductions for net operating losses, net capital losses, and charitable contributions) of the affiliated return shall be computed as if a federal consolidated return had been prepared that included only the members included in the Virginia consolidated return for the current year. If a federal deduction for a net operating loss, net capital loss or charitable contribution in the current year affects or is affected by another taxable year, then a similar computation shall be made for every such taxable year beginning on and after the year for which an election was made, or permission granted, to file a consolidated Virginia return, and federal taxable income shall be computed on a separate basis for every such taxable year before consolidated Virginia returns were filed.

(2) The federal taxable income shall be computed without giving effect to the deferral of any gain, loss, or deduction arising from a transaction with a corporation not subject to Virginia income tax.

(3) Any deferred gain, loss or deduction arising from a prior transaction with an affiliate shall be recognized for Virginia purposes when the affiliate subsequently ceases to be an affiliate or when the asset involved is transferred to a corporation which is not an affiliate.

(4) The group's federal taxable income for Virginia purposes shall be computed as if each affiliate's losses incurred before joining the Virginia consolidated return had been incurred in a separate return year. This provision shall not operate to create a separate return limitation year within the meaning of U.S. Treasury Reg. § 1.1502-21 or § 1.1502-22 if all three of the following conditions are satisfied with respect to the taxable year of the loss: the affiliate was subject to Virginia income tax and its loss was reported on a timely filed Virginia return; the affiliate satisfied the ownership requirements of the definition of "affiliated" in § 58.1-302 of the Code of Virginia on every day of the taxable year with respect to the group to which the loss will be carried; and either the affiliate was prohibited from being included in a consolidated Virginia return filed by other affiliates solely because of its apportionment factor, or permission to file a consolidated return was granted pursuant to the provisions of § 5 A 3.

b. If the group files separate Virginia returns or a combined Virginia return, then the federal taxable income (before and after deductions for net operating losses, net capital losses, and charitable contributions) of each member of the group shall be computed as if separate federal returns had been

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filed. A similar computation shall be made for every other year which affects or is affected by a federal deduction for a net operating loss, net capital loss or charitable contribution in the current year.

c. A group filing a combined Virginia return cannot claim a combined or consolidated deduction for federal net operating losses, net capital losses, or charitable contributions. Each affiliate must compute its separate federal taxable income (including its separate net operating loss deduction) pursuant to § 1 D, together with its separate Virginia NOLD modification pursuant to § 1 B 5 of VR 630-3-402.

d. Whenever the computation of federal taxable income includes a federal net operating loss deduction, the Virginia return for such deduction year shall include an addition or subtraction, as the case may be, that is in such proportion to each loss year's net Virginia NOLD modification as the loss absorbed in the deduction year bears to the total federal net operating loss for the loss year. The loss absorbed in the deduction year taxable income shall be the amount that would be subtracted from the federal net operating loss pursuant to I.R.C. § 172(b)(2) to compute the amount of the loss available in subsequent years, assuming that separate federal returns were filed pursuant to this subsection of this regulation. For example, assume that a 1990 federal net operating loss of \$1,000 is carried back and offsets income in 1987 and 1988. The loss absorbed in 1988 is determined by computing the amount of the loss available in 1990 pursuant to I.R.C. § 172(b)(2). If federal rules require that 1988 taxable income of \$300 be subtracted from the loss, then 30% (\$300 ÷ \$1,000) of the net Virginia NOLD modification associated with the 1990 loss must be reported in the 1988 Virginia return.

2. If an election under Internal Revenue Code § 338(h)(10) is made (allowing a sale of stock in a subsidiary to be treated as a sale of the subsidiary's assets), then the Virginia returns of any members of the selling group that are affected by such election shall reflect the amount and character of income recognized in the federal consolidated return.

3. The details of the computation of federal taxable income shall be disclosed in the return together with copies of any federal returns filed.

~~(B)~~ § 2. Separate return.

~~(1)~~ A. Description

A separate return shows only the income, expenses, gains, losses, ~~allocation~~ allocable income, and apportionment factors of the filing corporation. All affairs of other members of the affiliated group are ignored unless Va. Code § 58.1-446 of the Code of Virginia applies.

~~(2)~~ B. Filing.

If the affiliated group filed a consolidated federal return and the filing corporation files a separate Virginia return, a complete copy of the federal consolidated return must be filed with the Virginia return, or must be made available to the department upon request, along with a A worksheet must accompany the federal consolidated return, showing the adjustments and eliminations for consolidation in form similar to that set forth in ~~(C)~~~~(3)~~ § 3 C below.

~~(C)~~ § 3. Consolidated returns.

~~(1)~~ A. Description.

A consolidated return is a single return for all eligible members of an affiliated group of corporations. The return shall show consolidated net income prepared in accordance with I.R.C. § 1502 and the regulations thereunder and consolidated apportionment factors (See Va. Code §§ 58.1-407 through 58.1-420 of the Code of Virginia).

~~(2)~~ B. Eligible members.

~~(a)~~ 1. A consolidated return must include the net income and apportionment factors of all members of the affiliated group which would be subject to Virginia income tax if separate returns were to be filed. However, in the first year two or more members of an affiliated group are required to file a Virginia income tax return, all members subject to Virginia income tax and otherwise eligible to participate in a Virginia consolidated return in that first year must have the same taxable year end in order for the group to elect consolidated filing. In order for the affiliate's income to be includible in a Virginia consolidated return, each new affiliate created or purchased after the initial Virginia consolidated return filing must adopt the taxable year end of the original group for the new affiliate's first full 12-month taxable year and thereafter.

~~(b)~~ 2. A consolidated return may not include corporations which are: (i) exempt from Virginia income tax under Va. Code § 58.1-401 of the Code of Virginia or U.S. Public Law 86-272 (15 U.S.C.A. §§ 381-384), or (ii) required to use different apportionment factors (e.g. three factor (Va. Code § 58.1-408) and revenue miles (Va. Code § 420)) if separate returns were to be filed; or ~~(iii)~~ not affiliated as defined by Va. Code § 58.1-302 of the Code of Virginia, or ~~(iv)~~ (iii) not subject to Virginia income tax if separate returns were to be filed, or ~~(v)~~ (iv) using different taxable years. For purposes of clause (iv) a corporation shall not be deemed to be using a different taxable year if it files a return for a period of less than 12 months and all of the months are within the taxable year of the consolidated group.

~~(c)~~ 3. No affiliated corporations, otherwise eligible,

will be denied the privilege of consolidation merely because other members of the affiliated group are not eligible to be included.

(3) C. Filing.

A complete copy of the federal consolidated return, or the separate federal return of each corporation included in the consolidated Virginia return, must be filed with the Virginia return. All supplementary and supporting schedules filed with a consolidated Virginia return should be prepared in columnar form, one column being provided for each corporation included in the consolidation, one column for a total of like items before adjustments are made, one column for intercompany eliminations and adjustment, and one column for a total of the like items after giving effect to the eliminations and adjustments. The items included in the columns for eliminations and adjustments should be symbolized so as readily to identify contra items affected, and suitable explanations appended, if necessary.

(4) D. Consent.

(a) 1. The filing of a consolidated return requires the consent of all corporations eligible to be included. The filing of a consolidated return will be deemed to be consented to by all eligible corporations included therein. See Va. Reg. § 630-3-447 VR 630-3-447 for requirements as to the execution of the consolidated return and consent to be included.

(b) 2. Once a consolidated return has been filed all subsequent returns by such corporations, their successors, and other members of the affiliated group who are subsequently required to file a Virginia income tax return, must also be filed on a consolidated basis unless the department grants permission to change from a consolidated return.

(D) § 4. Combined returns.

(1) A. Description.

For a combined return the Virginia taxable income or loss is separately determined for each eligible corporation. The Virginia taxable income is then separately allocated and apportioned for each eligible corporation using each corporation's commercial domicile and apportionment factors. The resulting income or loss from Virginia sources is then combined and reported on a single return.

(2) B. Eligible members.

(a) 1. Members of an affiliated group are eligible to file a combined return if they are: (i) subject to Virginia income tax if a separate return were to be filed, and (ii) affiliated as defined by Va. Code § 58.1-302 of the Code of Virginia, and (iii) filing using the same taxable year. For the purpose of determining eligibility to be included in a combined return, a

corporation shall not be deemed to be using a different taxable year if it files a return for a period of less than 12 months and all of the months are within the taxable year of the combined group.

(b) 2. Members of an affiliated group are eligible to file combined even though they use different apportionment formulas.

(3) C. Filing.

A combined return shall contain all of the information that would be contained in a separate return for each corporation. A copy of the federal consolidated return, or the separate federal returns of each corporation included in the combined return, must be filed with the Virginia return. In addition, a schedule shall be included with the Virginia return showing the separate income, adjustments, allocation and apportionment factors for each included corporation.

(4) D. Consent.

The filing of a combined return requires the consent of all of the corporations eligible to be included. The filing of a combined return will be deemed to be consented to by all eligible corporations included therein. All subsequent returns must also be filed on a combined basis. See Va. Reg. § 630-3-447 VR 630-3-447 for requirements as to execution of the combined return and the required consent of each included corporation.

(E) § 5. Permission to change.

(1) A. To or from consolidated.

1. Permission to change to or from filing consolidated returns will generally not be granted. Such changes affect the allocation and apportionment factors and distort the business done in Virginia and the income arising from activity in Virginia.

2. If granted, permission to change will generally be effective only for returns filed on and after the date the request for permission to change was filed.

3. Permission to file a consolidated return will generally be granted if timely requested by a group including corporations that would be required to use different apportionment factors. A request is timely filed if it is filed on or before the due date for the first Virginia return for an affiliate which was owned by the same interests on January 1, 1990, and which would be required to use an apportionment factor that is not the same as that required to be used by all other affiliates of the group in previous Virginia returns, whether or not any affiliate is subject to tax in another state.

(2) B. To or from combined.

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1. Separate and combined returns do not affect the allocation and apportionment formulas for each corporation and permission to change from separate to combined returns or from combined to separate returns will generally be granted.

2. If granted, permission to change will generally be effective only for returns filed on and after the date the request for permission to change was filed.

(3) C. Election.

Elections as to filing method are deemed to be made by the affiliated group as a whole. Changes in the membership of an affiliated group do not affect the original election by the affiliated group. If a new corporation becomes a member of the affiliated group, the new corporation must follow the filing method previously elected by the group.

(4) D. Short year return.

The filing of a separate short year federal and Virginia return upon organization or acquisition of a new corporation will not be deemed an election of separate return status. The filing of the first return for a 12-month taxable year beginning on or after the date of organization or acquisition of a new corporation which creates the affiliated group will be deemed the filing which elects a return filing status.

(F) § 6. Carryovers.

(+) A. Double benefit prohibited.

When any corporation elects to file, or is granted permission to file, a consolidated or combined return and subsequently incurs a net operating loss or net capital loss for federal income tax purposes, such loss may be carried back to specified prior years or carried over to specified subsequent years under federal law. A To the extent a federal net operating loss may not be is used to offset income of other members of the affiliated group in a Virginia combined or consolidated return and also in the year of the loss, it may not be used to reduce income for Virginia purposes of the loss corporation or other members of the group in any other years via the federal net operating loss deduction.

(2) B. No Virginia carrybacks or carryovers.

1. Virginia does not have any provisions in the law permitting the carryback deduction of net operating losses, net capital losses, or charitable contributions carried back or carried over from other taxable years except when allowable as a deduction in computing federal taxable income (See § 1 b 5 of VR 630-3-402). When the affiliated group files federal and Virginia returns on a different basis or files a federal consolidated return including corporations which are not subject to Virginia income tax, the term "federal

taxable income" requires special definition for Virginia purposes. In such cases the federal taxable income (before and after carrybacks) of the affiliated group and of each member shall be computed as if the affiliated group contains only those members included in the Virginia consolidated or combined return. The details of such computations shall be disclosed in the return together with copies of any federal returns filed a loss is incurred in a year in which a consolidated or combined Virginia return is filed, the amount of the net Virginia modifications that follow the federal net operating loss deduction shall be computed in accordance with § 6 C (consolidated loss year return) or § 6 D (combined loss year return). No Virginia modifications follow a net capital loss or charitable contribution carryover.

2. A corporation or an affiliated group of corporations may elect to forgo carryback of a net operating loss or net capital loss for Virginia purposes independent of any such election for federal purposes if, and only if, the affiliated group files its Virginia and federal returns on a different basis, or files a federal consolidated return including corporations which are not subject to Virginia income tax. The election for Virginia purposes shall be made by filing a statement with the Virginia return for the loss year in the same manner as prescribed by federal law and regulations.

3. Virginia does not have any provisions in the law permitting the deduction of charitable contributions for the current year or carried over from other taxable years except when allowable as a deduction in computing federal taxable income. If federal and Virginia returns are filed on a different basis, or including different members, then federal taxable income, including federal limitations on the allowable deduction for charitable contributions and the interaction between contribution carryovers and loss carryovers, shall be computed in accordance with § 1 D.

(3) C. Loss incurred in a consolidated Virginia return

1. When the consolidated federal taxable income (computed in accordance with § 1 D for purposes of a consolidated Virginia return) includes a federal net operating loss deduction from a loss year in which a consolidated Virginia return was filed, and which is not a separate return limitation year (as defined in § 1.1502-1(f) of the Internal Revenue Code) with respect to any affiliate for Virginia or federal tax purposes, the consolidated Virginia additions and subtractions from the loss year shall modify the consolidated federal net operating loss by being carried back or over to other years in the same proportion as the net operating loss deduction absorbed for any year for federal purposes.

2. When any federal return for a member of an affiliated group claims the separate federal taxable

income of an affiliate (whether computed for purposes of a separate or combined Virginia return, or for a consolidated Virginia return affected by a separate return limitation year for federal or Virginia tax purposes) includes a net operating loss deduction from a loss year in which a consolidated or combined Virginia return was filed then the federal net operating loss deduction shall be deemed to carry with it a Virginia modification from the loss year computed in the following manner:

a. If the consolidated Virginia return of the affiliated group for the loss year shows a positive consolidated Virginia taxable income that is not a loss, then all of the loss corporation's federal loss and Virginia additions and subtractions have been offset by its own additions and the income, additions and subtractions of other members of the affiliated group. Therefore a net Virginia modification equal to 100% of any federal net operating loss deduction attributable to such loss year shall be added to the Virginia taxable income of the corporation claiming it.

b. If the consolidated Virginia return of the affiliated group for the loss year shows a negative Virginia taxable income that is a loss, then the procedures of U.S. Treasury Regulation § 1.1502-79 shall be applied to the Virginia taxable income of each member of the group to determine a tentative Virginia loss for each loss corporation. The difference between the tentative Virginia loss and federal taxable income (loss) of each corporation, computed as if all corporations had filed separate federal returns, represents the amount of the additions and subtractions of the loss corporation and the income, additions and subtractions of affiliated corporations which were offset in the Virginia consolidated or combined return for the loss year. net Virginia modification is computed as follows:

(1) Identify the affiliates in the consolidated Virginia return for the loss year which have incurred a federal net operating loss for the year ("loss affiliates").

(2) Apply the procedures of U.S. Treasury Regulation § 1.1502-79 to divide the consolidated federal net operating loss among the loss affiliates in proportion to each affiliate's separate federal net operating loss.

(3) Apply the procedures of U.S. Treasury Regulation § 1.1502-79 to divide the consolidated Virginia taxable income (with Virginia additions and subtractions, but before allocation and apportionment) among the loss affiliates. The consolidated taxable income is divided between loss affiliates by taking the proportion of each affiliate's separate Virginia taxable income to the total

separate Virginia taxable income for all loss affiliates. This amount is the tentative Virginia loss.

(4) For each loss affiliate identified in step (1) above, the net Virginia modification is the difference between its share of the consolidated federal net operating loss computed in step (2) and its share of the consolidated Virginia taxable loss computed in step (3). If the federal loss computed in step (2) is greater than the Virginia loss computed in step (3), then the net modification will be an addition. If the federal loss computed in step (2) is less than the Virginia loss computed in step (3), then the net modification will be a subtraction. Such amount shall modify the net operating loss and shall be carried back or over to other years in the same proportion as the net operating loss deduction claimed absorbed for any year.

D. Loss incurred in a combined Virginia return.

1. When the separate federal taxable income of an affiliate (computed for purposes of any Virginia return) includes a net operating loss deduction from a loss year in which a combined Virginia return was filed, then the federal net operating loss deduction shall be deemed to carry with it a net Virginia NOLD modification from the loss year that includes its own additions and subtractions plus an amount representing the income of other affiliates offset by the loss in the combined return. The net Virginia NOLD modification is computed in the following manner:

a. If the combined Virginia taxable income after allocation and apportionment is not a loss, then each affiliate's federal net operating loss and Virginia subtractions for the taxable year have been entirely offset by its own additions and the income, additions, and subtractions of other members of the affiliated group. Therefore, each affiliate's net Virginia modification shall be an addition equal to the amount of its federal net operating loss. This prevents a federal net operating loss (incurred under this scenario) from reducing Virginia taxable income in any other year to which the loss may be carried for federal purposes.

b. If a combined group's Virginia taxable income after allocation and apportionment is a loss, but the separate Virginia taxable income after allocation and apportionment is not a loss for any affiliate with a federal net operating loss (incurred in the year at issue), then all of such affiliate's federal net operating loss and Virginia subtractions have been entirely offset by its own additions and the income allocated and apportioned to Virginia. Therefore, such affiliate's net Virginia NOLD modification shall be an addition equal to the amount of its federal net operating loss.

c. If the combined Virginia taxable income after

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allocation and apportionment is a loss, then the net Virginia NOLD modification is computed as follows for each affiliate which has both a federal net operating loss and a loss after allocation and apportionment:

(1) Compute the amount of income offset in combination by using the summation method. If all members of the combined group have a loss after allocation and apportionment, then no income has been offset in the combined return and no computations are required under subdivisions (2) and (3). Therefore, each affiliate's net Virginia modification will be its own additions and subtractions as provided in subdivision (4).

Summation method: Compute the total Virginia taxable income of nonloss combined group members offset in combination, by summing the Virginia taxable income or loss (after allocation and apportionment) for each affiliate not having both a federal net operating loss and a Virginia taxable loss after allocation and apportionment, including affiliates subject to § 6 D 1 b, above. Note that the resulting amount is decreased by an affiliate's loss created solely by Virginia subtractions and allocable income. Please see Example 6, which demonstrates the summation method.

(2) Apply the procedure outlined in U.S. Treasury Regulation § 1.1502-79 to allocate the income offset in combination determined under subdivision (1) to those affiliates having both a federal and Virginia loss, in proportion to their losses after allocation and apportionment.

(3) For each affiliate to which an amount has been allocated pursuant to subdivision (2), convert the allocated amount to an amount equivalent to an addition before allocation and apportionment. To accomplish this, add the amount derived in subdivision (2) above to each affiliate's income allocated to Virginia (if any), and divide the resulting sum by its apportionment factor. From this grossed up amount, subtract the income allocated before apportionment. The result is the addition equivalent to the income of other affiliates that has been offset by a federal net operating loss in the combined Virginia return in the year of the loss.

(4) The net Virginia NOLD modification for each affected affiliate is the sum of its separate additions and subtractions plus the addition equivalent computed pursuant to subdivision (3).

§ 7. Mixed apportionment factors.

A. Three factor required.

If a consolidated Virginia return will include corporations that are required to use different

apportionment factors, the return shall use a three factor apportionment formula that includes the property, payroll, and sales of all affiliates.

B. Computation.

The consolidated property, payroll, and sales factors of the group shall be computed as follows:

1. With respect to a corporation that is required to use a single apportionment factor under §§ 58.1-417, 58.1-418, 58.1-419 or 58.1-420 (single factor affiliate), the group shall:

a. Include in the consolidated property, payroll, and sales factor denominators amounts with respect to the single factor affiliate determined following the normal rules for each factor;

b. Include in the consolidated property factor numerator an amount constructed by multiplying the amount includible in the property factor denominator determined in (a) above by the percentage derived from the appropriate factor prescribed for the single factor affiliate;

c. Include in the consolidated payroll factor numerator an amount constructed by multiplying the amount includible in the payroll factor denominator determined in (a) above by the percentage derived from the appropriate factor prescribed for the single factor affiliate; and

d. Include in the consolidated sales factor numerator an amount constructed by multiplying the amount includible in the sales factor denominator determined in (a) above by the percentage derived from the appropriate factor prescribed for the single factor affiliate.

2. With respect to all affiliates other than single factor affiliates, the group shall determine the property, payroll, and sales to be included in the consolidated numerators and denominators following the normal rules appropriate to each factor.

(G) § 8. Examples.

The principles of this section regulation are illustrated by the following examples:

Example 1. Corporations A, B, C, D, E, F and G constitute a controlled group of corporations within the meaning of Section 1563 of the Internal Revenue Code. Corporations A, B, and C are manufacturing companies, subject to the Virginia income tax. Corporations D and E are motor carriers, subject to the Virginia income tax. Corporation F is a Virginia-based insurance company exempt from Virginia income tax under Va. Code § 58.1-401 of the Code of Virginia. Corporation G is a manufacturing company exempt from the Virginia income

tax under Public Law 86-272.

(a) Corporations A, B, and C, D, and E may file a consolidated return. If corporations D and E may not be included therein were not included in consolidated returns filed prior to 1990 because they are were not subject to the same three-factor apportionment formula but apportion income using vehicle miles under Va. Code § 58.1-417, they must be included in the consolidated return for the group filed for years after 1989. Corporations F and G may not be included because they are not subject to the Virginia income tax.

(b) Corporations A and B A, B, D, and E may not file a consolidated return without corporation C. All eligible corporations must be included in a consolidated return. If corporation C is on a different fiscal year than corporations A and B A, B, D, and E, it must change its fiscal year in order for a consolidated return to be filed.

(c) If corporations D and E may file filed a consolidated return whether or not for years prior to 1990, although consolidation is was not elected for corporations A, B, and C, then the consolidated return for years after 1989 must include corporations A, B, and C.

Example 2. Same facts as in example 1 above. Corporations A, B and C, D, and E file consolidated Virginia returns for 1979 and 1980 1990 and 1991. In 1981-1992 corporation G expands its activity within Virginia and becomes subject to Virginia income tax. Corporation G must be included in the 1981-1992 consolidated Virginia return with corporations A, B and C, D, and E. The corporations may not file separate returns unless corporations A, B, and C they apply to the department for permission.

Example 3. An affiliated group of five corporations has filed a consolidated federal return the three preceding years, and for calendar year 1990 the group reported a consolidated net operating loss. All five corporations are subject to tax in Virginia in 1990, but none of the corporations were subject to tax in Virginia in prior years. The relevant lines of the federal return are shown below.

1990 Federal Return	CONSOL	A	B	C	D	E
Line 28	(400)	50	(150)	(100)	50	(250)
Line 29a (NOLD)	(75)	0	0	(50)	(25)	0
Line 30	(475)	50	(150)	(150)	25	(250)

a. If the group elects to file a consolidated Virginia return the consolidated federal taxable income for Virginia purposes would be (400) because the group's net operating loss deduction cannot create or increase a federal net operating loss. Line 1 of the Virginia return is shown below.

1990 Virginia	CONSOL	A	B	C	D	E
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Return

Federal Taxable Income	(400)	50	(150)	(100)	50	(250)
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Assuming that the group has no federal taxable income in the preceding taxable years to absorb net operating loss deductions, the group would carry the prior year losses of (75) and the 1990 loss of (400) to 1991 together with the appropriate portion of the net Virginia modification from the respective loss years (see examples 4 and 5).

b. If the group elects to file separate returns the sum of the separate federal taxable incomes for Virginia purposes would total (425). Corporation C's federal net operating loss deduction of (50) from prior years cannot increase C's 1990 federal net operating loss for Virginia purposes, while D's federal net operating loss deduction is absorbed to the extent of D's income. Line 1 of the Virginia return is shown below.

1990 Virginia Return	TOTAL	A	B	C	D	E
Federal Taxable Income	(425)	50	(150)	(100)	25	(250)

Each corporation must carry its 1990 loss back three years as if separate federal returns had been filed for those years. Thus, for Virginia purposes corporations B's and E's 1990 federal net operating losses will be deemed to have been absorbed by any separate federal taxable income in 1987, 1988, and 1989 (even though no Virginia returns were required to be filed for those years). Any loss not absorbed by the separate federal taxable income of the corporations would be available to carry forward to 1991 together with each corporation's net 1990 Virginia modification. Since C has a federal net operating loss deduction in 1990, there can be no federal taxable income in prior years against which to offset the loss. Therefore, the entire federal net operating loss deduction of (150) for 1990 and prior years may be carried forward to 1991.

c. If the group elects to file a combined Virginia return the amount reported as the separate federal taxable income for each affiliate (for purposes of the combined return) is deemed to be computed as if separate federal returns were filed. The years to which the federal net operating losses are carried and the amounts absorbed each year for Virginia purposes are deemed to be computed as if separate federal returns were filed, regardless of the type of federal returns actually filed in the carryback or carryover year. The portion of the combined net Virginia modification which follows each corporation's 1990 federal net operating loss would be computed as required by § 6 D (see example 6).

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Example 4. Same facts as in example 3 except that: (i) the group elects to file a consolidated Virginia return, (ii) there is no federal taxable income in prior years to absorb the 1990 federal net operating loss, and (iii) the group is subject to Virginia tax in years prior to 1990. The group would carry the 1990 federal net operating loss to 1991 along with unabsorbed losses from prior years. Both the losses from prior years and the 1990 loss carry with them the net Virginia modifications from each loss year. For 1990 the net Virginia modification is the sum of the consolidated additions of 133 and consolidated subtractions of (86) for a total modification of 47 that follows the 1990 consolidated federal net operating loss of (400). Assume that the (75) consolidated federal net operating loss from prior years carries with it a net Virginia modification of 35. The relevant lines of the 1991 federal and Virginia returns are shown below.

1991 Federal Return	CONSOLIDATED
Line 28	600
Line 29a (Prior year NOLD)	(75)
Line 29a (1990 NOLD)	(400)
Line 30	125

1991 Virginia Return	CONSOLIDATED
Federal Taxable Income	125
Va. additions	125
Va subtractions	(65)
Net Va. NOLD modification (from prior loss year)	35
(from 1990 loss year)	47
Virginia taxable income	267

Example 5. Same facts as examples 3 and 4. The portion of the consolidated federal 1990 loss, and accompanying Virginia modification, attributable to each affiliate must be computed. The relevant lines of the consolidated 1990 Virginia return are shown below.

1990 Virginia Return	CONSOL	A	B	C	D	E
Federal Taxable Income	(400)	50	(150)	(100)	50	(250)
Va. additions	133	0	0	52	31	50
Va subtractions	(86)	(56)	(30)	0	0	0
Net Va. NOLD modification	5	0	0	0	5	0
Virginia taxable income	(348)	(6)	(180)	(48)	86	(200)
Less allocable dividends	(32)	(4)	(6)	(12)	0	(10)
Apportionable income	(380)	(10)	(186)	(60)	86	(210)
Apportionment factor	50%	n/a	n/a	n/a	n/a	n/a
Income apportioned to Va.	(190)	n/a	n/a	n/a	n/a	n/a
Dividends allocated to Va.	22	n/a	n/a	n/a	n/a	n/a
Income of a multistate	(168)	n/a	n/a	n/a	n/a	n/a

'n/a' means not applicable.

Federal net operating losses: The 1990 consolidated federal net operating loss must be divided among the loss corporations in proportion to their operating losses using the principles of U.S. Treasury Regulation § 1.1502-79. The

amount reported for Virginia purposes by each loss corporation as a federal net operating loss deduction attributable to 1990 is computed as follows:

$$B: (120.00) = 150 \div (150 + 100 + 250) \times (400)$$

$$C: (80.00) = 100 \div (150 + 100 + 250) \times (400)$$

$$E: (200.00) = 250 \div (150 + 100 + 250) \times (400)$$

Net Virginia modification: The amount of the 1990 net Virginia modifications that are associated with B's, C's, and E's portion of the consolidated 1990 federal net operating loss for Virginia purposes is computed by first computing a tentative Virginia loss as follows:

$$B: (146.36) = 180 \div (180 + 48 + 200) \times (348)$$

$$C: (39.03) = 48 \div (180 + 48 + 200) \times (348)$$

$$E: (162.61) = 200 \div (180 + 48 + 200) \times (348)$$

The difference between each loss corporation's portion of the consolidated federal net operating loss and the tentative Virginia loss is the amount of consolidated income, additions and subtractions that was offset in the consolidated Virginia return by corporation's loss (the amount modifying the federal net operating loss). This amount is computed as follows:

$$B: (26.36) = (146.36) - (120.00) \text{ or a net subtraction of } \$26.36$$

$$C: 40.97 = (39.03) - (80.00) \text{ or a net addition of } \$40.97$$

$$E: 37.39 = (162.61) - (200.00) \text{ or a net addition of } \$37.39$$

Example 5.A. Same facts as Example 5, except that E is not subject to Virginia income tax in 1991. For the 1991 Virginia consolidated return, the group consisting of A, B, C, and D may claim a federal net operating loss deduction in computing federal taxable income for Virginia income tax purposes of 275.00, computed as follows:

$$(75.00) = \text{Consolidated losses prior to 1990 (C and D)}$$

$$(120.00) = \text{B's portion of the 1990 consolidated loss}$$

$$(80.00) = \text{C's portion of the 1990 consolidated loss}$$

$$(275.00) = \text{Total consolidated net operating loss deduction}$$

Assume that for federal purposes, the following amounts of net operating loss were utilized in 1991:

$$(90.00) = \text{B's federal net operating loss utilized}$$

A Virginia modification accompanies B's federal net

operating loss utilized, computed as follows:

(19.77) = the net subtraction from 1990 of \$26.36, multiplied by .75 (\$90.00 federal loss utilized divided by \$120.00 total loss available).

The total net Virginia modifications remaining for losses carried to 1992 are:

35.00 = Consolidated net Virginia modification associated with losses prior to 1990

(6.59) = B's portion of the 1990 consolidated net Virginia modification remaining after offsetting the portion of the 1990 federal net operating loss utilized in 1991

40.97 = C's portion of the 1990 consolidated net Virginia modification

49.61 = Total net Virginia modification that follows the total federal net operating losses of (275.00).

If E becomes subject to Virginia income tax in 1992, it will be deemed to have claimed a federal net operating loss deduction of (200.00) in computing its separate 1991 federal taxable income for Virginia purposes. To the extent any of the (200.00) was absorbed in 1991 for federal purposes, the same portion of E's consolidated net Virginia modification (37.39) will also be deemed to have been used.

Example 6. Same facts as in Example 3 except that the group elects to file a combined Virginia return. The relevant lines of the 1990 Virginia return are set out below.

1990 Virginia Return	TOTAL	A	B	C	D	E
Federal Taxable Income	(400)	50	(150)	(100)	50	(250)
Virginia additions	133	0	0	52	31	50
Virginia subtractions	(86)	(56)	(30)	0	0	0
Net Va. NOLD modifications	5	0	0	0	5	0
Virginia Taxable Income	(348)	(6)	(180)	(48)	86	(200)
Less: allocable dividends	(32)	(4)	(6)	(12)	0	(10)
Apportionable income	(380)	(10)	(186)	(60)	86	(210)
Apportionment factor	n/a	40%	50%	15%	100%	30%
Income apportioned to Va.	(83)	(4)	(93)	(9)	86	(63)
Dividends allocated to Va.	22	0	0	12	0	10
Income of a Multistate	(61)	(4)	(93)	3	86	(53)

'n/a' means not applicable

Note that the totals in the "TOTAL" (combined) column are provided for convenience. The actual combination on a Virginia combined return takes place only on the line

labeled "income of a multistate." When each corporation's income is computed separately, D's federal net operating loss from a prior year is absorbed; and, therefore, a net Virginia NOLD modification associated with it must be reported.

Federal net operating loss: The amount that will be carried back or over in computing federal taxable income for Virginia purposes is equal to the separate federal net operating loss for B, C, and E.

Net Virginia NOLD modification: Although C has a federal net operating loss, its separate income of a multistate is positive. Pursuant to § 6 D 1 b of this regulation, C's federal net operating loss of \$100 will carry with it a net Virginia NOLD modification equal to an addition of \$100.

Affiliates B and E have both a federal net operating loss and a loss after allocation and apportionment. They must compute an addition pursuant to § 6 D 1 c of this regulation, utilizing the steps enumerated below.

Income offset by B & E losses	TOTAL	A	B	C	D	E
B & E losses	(146)		(93)			(53)
Other affiliates income	85	(4)		3	86	

Step 1: Compute the income offset in combination:

Because of filing in a combined return, the \$85 income of A, C, and D offsets a portion of the \$146 loss of B and E (A's loss is not attributable to a federal net operating loss). The income offset in combination (\$85) is computed using the summation method:

$$\$85 = (4) + 3 + 86$$

Step 2: Allocate the income offset in combination between the appropriate affiliates:

The procedure outlined in U.S. Treasury Regulation § 1.1502-79 is then used to divide the \$85 income offset in combination among B and E in proportion to their loss after allocation and apportionment, (\$93) and (\$53), respectively.

$$B: \$54.14 = \$85 \times (93 \div (93 + 53))$$

$$E: \$30.86 = \$85 \times (53 \div (93 + 53))$$

Therefore, \$54 of B's \$93 loss, and \$31 of E's \$53 loss, respectively, are deemed to have offset the income, after allocation and apportionment, of other affiliates in the combined Virginia return.

Step 3: Compute the amount of B's and E's federal net operating loss deemed to offset the income of the other affiliates, and the Virginia modification accompanying B's

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and E's federal net operating loss.

In a combined return, B's and E's federal net operating loss offsets the income of other affiliates after allocation and apportionment. However, since B's and E's federal net operating loss is on a preapportionment basis, the Virginia modification must be on a preapportionment basis as well. This modification is computed by converting B's and E's post apportionment offsetting losses to an amount equivalent to an addition before allocation and apportionment, and adding B's and E's separate Virginia additions and subtractions. The conversion steps are summarized below:

Net Va. NOLD	TOTAL	A	B	C	D	E
modification						
Income offset from above	85		54			31
Income allocated to Va.	10		0			10
Subtotal before gross up	95		54			41
Divide by App. factor	n/a		50%			30%
Subtotal after gross up	245		108			137
Less: allocable income	(16)		(6)			(10)
Addition equivalent	229		102			127
Separate Va. additions	50		0			50
Separate Va. subtractions	(30)		(30)			0
Net Va. NOLD modification	249		72			177

Note that the totals in the "TOTAL" column are provided for convenience only and have no relevance to the actual computation of the separate net Virginia NOLD modification for B and C.

Explanation:

E's after apportionment loss was first used to offset all of E's income allocated to Virginia (B had no income allocated to Virginia). Therefore, E's portion of the income offset by combination is first increased by its income allocated to Virginia: $41 = 31 + 10$. This amount is then "grossed up" by dividing by the apportionment factor. Both B and E had income allocable everywhere that increased the loss apportioned to Virginia. Since the Virginia modification should only account for the amount of federal net operating loss offsetting the income of other affiliates, the income allocable everywhere must be subtracted from the "grossed up" amount to compute the amount equivalent to an addition before allocation and apportionment. Note that this addition before allocation and apportionment represents the amount of federal net operating loss actually utilized by B and E in offsetting the income of other affiliates. B and E then add this equivalent addition to their own additions and subtractions for the loss year to arrive at the net Virginia NOLD modification. Note that the net Virginia NOLD modification may be either positive or negative. This modification would be negative if an affiliate's subtractions exceeded the addition equivalent computed above.

Example 6.A. This example is a combined Virginia return for A, B, C, D, and E for 1991. Assume that B and E had \$100, and \$50, respectively, of federal taxable income on Line 28, Form 1120, resulting in the utilization

of \$(100) and \$(50), respectively, of B's and E's of B's federal net operating loss carryforward in computing 1991 federal taxable income. On a schedule attached to the affiliated group's combined Virginia income tax return, the amount of federal taxable income for Virginia purposes for B and E would be computed on an additional schedule in the following manner:

(a) Compute the percentage of federal net operating loss utilized:

B: $67\% = \$100 \text{ utilized} / \150 available

E: $20\% = \$40 \text{ utilized} / \200 available

(b) Compute the amount of net Virginia NOLD modification following B's and E's federal net operating loss.

B: $\$48.24 = 67\% * \$72 \text{ (1990 net Virginia NOLD modification)}$

E: $\$35.40 = 20\% * \$177 \text{ (1990 net Virginia NOLD modification)}$

(c) Compute the federal taxable income for Virginia tax purposes of B and E.

B: $\$48.24 = \$100 \text{ Line 28, Form 1120 federal income} - \$100 \text{ federal NOL carryforward} + \$48.24 \text{ net Virginia NOLD modification}$

E: $\$35.40 = \$40 \text{ Line 28, Form 1120 federal income} - \$40 \text{ federal NOL carryforward} + \$35.40 \text{ net Virginia NOLD modification}$

Example 7. Corporation F is a motor carrier and its Virginia vehicle mile factor under § 58.1-417 of the Code of Virginia is 25%. Corporation G is a railroad and its Virginia revenue car mile factor under § 58.1-420 is 10%. For 1990 the corporations have been granted permission to file a consolidated Virginia return. The consolidated denominators of the property, payroll, and sales factors are as follows:

	F	G	Consolidated
Property	300	1,800	2,100
Payroll	100	250	350
Sales	400	900	1,300

A consolidated numerator for each of the factors would then be constructed. The consolidated property factor numerator would be the sum of F's vehicle mile factor times F's property and G's revenue car mile factor times G's property, or 255 (25% of 300 + 10% of 1,800). Similarly, the consolidated payroll factor numerator would be 50 (25% of 100 + 10% of 250), and the consolidated sales factor numerator would be 190 (25% of 400 + 10% of 900). The consolidated apportionment factor would be one-third of $(255/2,100 + 50/350 + 190/1,300)$, or

13.6813%.

Example 8. Corporations A and B are affiliated and elected to file a consolidated federal return and a combined Virginia return for 1987. Neither corporation is subject to tax in another state so they do not allocate and apportion income on the Virginia return. Shown below is selected information from the Virginia combined return and from the federal consolidated return restated as if separate federal returns had been filed.

(000 omitted)	1987		1988		1989	
	A	B	A	B	A	B
Federal Separate Returns						
Capital gain (loss)	0	2	0	10	0	5
Capital loss carryover	0	0	0	0	0	0
Net capital gain (loss)	0	2	0	10	0	5
Operating income (loss)	(25)	(20)	(25)	5	25	0
Line 28	(25)	(18)	(25)	15	(25)	10
Line 29a (NOLD)	0	0	(25)	(18)	(50)	(3)
Line 30	(25)	(18)	(50)	(3)	(75)	7
Virginia Combined Return						
Federal Taxable Income	(25)	(18)	(25)	0	(25)	7
Current addition/ subtraction	5	6	(3)	2	0	0
Net Va. NOLD modification	0	0	0	5	0	1
Virginia taxable income	(20)	(12)	(28)	7	(25)	8
Combined Va. taxable income	(32)		(21)		(17)	

Corporation A incurred a \$25,000 net operating loss each year. On a separate federal return A would report a federal net operating loss deduction of \$25,000 in 1988 and \$50,000 in 1989. However, a net operating loss deduction cannot create or increase a net operating loss, so the federal taxable income for Virginia purposes is (\$25,000) in each year.

Each corporation's net operating loss will carry with it a net Virginia NOLD modification which will be reported as an addition in the year that the federal net operating loss is absorbed. Applying the principles of § 6 D of this regulation, the net Virginia NOLD modification for each loss is as follows:

$$1987 - A: \$5,000 = (20/32 \times (\$32,000)) - (25/43 \times (\$43,000))$$

$$1987 - B: \$6,000 = (12/32 \times (\$32,000)) - (18/43 \times (\$43,000))$$

$$1988 - A: \$4,000 = (\$21,000) - (\$25,000)$$

$$1989 - A: \$8,000 = (\$17,000) - (\$25,000)$$

In the consolidated federal return for 1988 the group reported a consolidated loss of (\$10,000). However, when the income information is restated as if separate federal returns had been filed, A would report a loss of (\$25,000) and B would absorb a portion of its separate 1987 loss. The same portion of B's net Virginia NOLD modification will be reported as an addition $(\$5,000 = 15/18 \times \$6,000)$. Similarly, when the remaining portion of B's 1987 loss is

absorbed in 1989, the remaining portion of B's net Virginia NOLD modification is reported. However, for 1987, 1988 and 1989 none of A's net operating losses and, consequently, none of A's Virginia NOLD modifications can be absorbed, but may be carried over to future years.

Example 9. Same facts as in example 8. For the 1990 return the group requests and is granted permission to file a consolidated Virginia return. Pursuant to § 1 D 1 a (4) the change in filing status will not create a separate return limitation year. Selected information from the federal and Virginia consolidated returns for 1990 and 1991 is shown below.

(000 omitted)	1990			1991		
	A	B	CONSOL	A	B	CONSOL
Federal consolidated return						
Capital gain (loss)	(42)	2	(40)	0	50	50
Capital loss carryover	0	0	0	(40)	(0)	(40)
Net capital gain (loss)	(42)	2	(40)	(40)	50	10
Operating income (loss)	(30)	5	(25)	(20)	120	100
Line 28	(30)	5	(25)	(20)	130	110
Line 29a (NOLD)	(75)	0	(75)	(100)	0	(100)
Line 30	(105)	5	(100)	(120)	130	10
Virginia consolidated return						
Federal Taxable Income	(30)	5	(25)	(120)	130	10
Current addition/ subtraction	10	0	10	0	0	0
Net Va. NOLD modification	0	0	0	27	0	27
Virginia taxable income	(20)	5	(15)	(93)	130	37

Although both federal and Virginia returns are filed on a consolidated basis, the federal information must be restated as if separate federal returns had been filed for years prior to 1990 except, in this case, the separate return limitation rules do not apply. When restating federal return information for 1991, the consolidated net capital loss and net operating loss from 1990 would be absorbed and, because separate return limitation rules do not apply, all of A's losses from 1987, 1988, and 1989 may also be absorbed together with all of their associated net Virginia NOLD modifications as shown below:

Source Year	Fed. NOLD	Va. Modif.
1987	25,000	5,000
1988	25,000	4,000
1989	25,000	8,000
1990	25,000	10,000
TOTAL FOR 1991	100,000	27,000

Example 10. Same facts as in example 8 except that B filed separate returns because A was not subject to Virginia tax until 1990 when the group elected to file a consolidated return. Under these circumstances the federal return information for Virginia purposes must be restated as if the group filed their first consolidated federal return in 1990 including any applicable separate return limitation year rules. Selected information from the 1991 return is shown below.

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(000 omitted)	1991		
Federal consolidated return	A	B	CONSOL
Capital gain (loss)	0	50	50
Capital loss carryover	(40)	(0)	(40)
Net capital gain (loss)	(40)	50	10
Operating income (loss)	(20)	120	100
Line 28	n/a	n/a	110
Line 29a (NOLD)	n/a	n/a	(25)
Line 30	n/a	n/a	85
Virginia consolidated return			
Federal Taxable Income	n/a	n/a	85
Current addition/subtraction	0	0	0
Net Va. NOLD modification	0	0	0
Virginia taxable income	n/a	n/a	85

When federal return information is restated for Virginia purposes as if the first federal consolidated return was filed in 1990, all of the 1990 consolidated federal capital loss may be used to offset 1991 consolidated federal capital gain. Similarly, all of the 1990 consolidated net operating loss may be used to offset 1991 consolidated operating income. However, years prior to 1990 would be separate return limitation years. Therefore, A's net operating losses from years prior to 1990 may not offset income of other affiliates in the 1991 consolidated return.

For Virginia purposes all of the available net operating losses are deemed to be from A. For Virginia purposes B's separate 1987 federal net operating loss was entirely absorbed by B's separate 1988 and 1989 federal taxable income. On the actual 1988 federal return B's income reduced the consolidated net operating loss for 1988 instead of absorbing any of B's separate 1987 loss.

Title of Regulation: VR 630-3-446. Intragroup Transactions. VR630-3-446.1. Corporation Income Tax: Foreign Sales Corporations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: December 1, 1992 - 10 a.m.

Written comment may be submitted until December 18, 1992.

(See Calendar of Events section for additional information)

Summary:

The existence of one or more of the six noninclusive factors listed create a rebuttable presumption that income from business done in Virginia is distorted. These factors are listed to determine that the transactions at issue have economic substance.

If a taxpayer's transaction is found to distort income from business done in Virginia, several remedies are included: income reattribution, expense reattribution, and a consolidated return filing requirement. A look

back rule is provided with regard to contributions of property between affiliated corporations.

A number of safeharbor transactions are provided. Transactions substantially like the listed safeharbors are deemed to not distort income from business done in Virginia.

Taxpayers may request permission from the department to have this regulation applied to their transactions.

VR 630-3-446. Intragroup Transactions.

VR 630-3-446. Price manipulation, Intercorporate transactions.

A. In general:

1. Price manipulation: When a corporation liable to taxation under this chapter by agreement or otherwise conducts the business of such corporation as to directly or indirectly benefit the members or stockholders of the corporation, or any of them, or any person or persons directly or indirectly interested in such business, by either buying or selling its products or the goods or commodities in which it deals at more or less than a fair price then the department may redetermine the income from Virginia sources.

2. Intercorporate transactions: When a corporation liable to taxation under this chapter sells its products, goods or commodities to another corporation or acquires and disposes of the goods, products or commodities of another corporation in such a manner as to create a loss or improper taxable income, and such other corporation by stock ownership, agreement or otherwise controls or is controlled by the corporation liable to taxation under this chapter, then the department may redetermine the income from Virginia sources of the corporation liable to taxation.

3. Parent corporations and subsidiaries: When any corporation liable to taxation under this chapter owns or controls or is owned by or controlled by another corporation the department may require the corporation liable to taxation to make a report consolidated with such other corporation and furnish such other information as the Department may require. If the department finds that any arrangements exist which cause the income from Virginia sources to be inaccurately stated then the department may equitably adjust the tax of the corporation liable to taxation under this chapter.

B. Definitions:

1. "Corporation liable to taxation under this chapter" means any corporation, as defined in Va. Reg. § 630-3-302, which is subject to tax under Va. Code §

58.1-400.

2. "By agreement or otherwise."

a. Whenever the income from Virginia sources of a controlled or controlling corporate taxpayer is other than it would have been had the taxpayer in the conduct of its affairs been an uncontrolled corporation dealing at arm's length with another uncontrolled corporation or unrelated individual or entity, then the manner in which taxpayer conducts its business will be deemed to be the result of an agreement, arrangement or understanding.

b. In many situations the Internal Revenue Service will apply I.R.C. § 482 to redetermine the federal taxable income of a corporation. Va. Code § 58.1-446 will be applied in situations where the federal taxable income is correct but, after application of the statutory allocation and apportionment formulas, the income from Virginia sources does not accurately reflect the business done in Virginia.

c. An example of such an agreement or arrangement is a subsidiary qualifying as a Domestic International Sales Corporation (DISC) under the Internal Revenue Code. In order to encourage international exports federal law permits federal taxable income to be artificially reduced by use of a DISC. As a result the income from Virginia sources of a corporation using a DISC to artificially reduce federal taxable income may not reflect the business done in Virginia.

3. "Conducts the business." The conduct or manner in which business is conducted reached by this section is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits or allowances. The conduct may be legal or even encouraged by the laws of other jurisdictions, including laws of the United States. The determining factor is whether the conduct of taxpayer's affairs, by inadvertence or design, causes the income from Virginia sources to be inaccurately stated.

4. "Benefit the members or stockholders."

a. The benefit from the manner in which business is conducted may be direct, as when the corporation sells its products to any one or more stockholders at less than a fair price, or indirect, as when the corporation sells its products to a subsidiary corporation in a manner which reduces the taxes owed by the corporation. Such reduction of taxes benefits all stockholders by increasing the earnings of the corporation available for dividends.

b. The direct or indirect benefit may be to any

stockholder of the corporation, stockholder of any controlled or controlling corporation, member of an association taxed as a corporation, employee, creditor, any other person interested in the corporation, or a related taxpayer of one of the foregoing. "Related taxpayer" is defined in I.R.C. § 1313(c).

5. "Buying and selling" includes purchases and sales and may also include other transactions which are the equivalent of a purchase or sale, such as certain leases. The entire transaction or series of transactions will be considered.

For example, the use of a product of the corporation by a stockholder without consideration followed by the sale of such used product to an unrelated party may be a sale reached by this section depending on the facts and circumstances.

6. "Products." The product of a corporation is tangible personal property held or produced for sale in the normal course of business and includes all services connected with the purchase or sale of products such as delivery, maintenance and credit.

7. "Goods or commodities." The goods or commodities in which a corporation deals are raw materials and tools used in a manufacturing process or merchandise for resale.

8. "Fair price." Fair price means "arm's length charge," "arm's length consideration" and "arm's length price" as such terms are defined in Treasury Reg. § 1.482-2. For purpose of this section, products, goods or commodities sold to employees as part of a bona fide employee discount program shall not be deemed sold at other than a fair price.

9. "Acquires and disposes." The term "acquires and disposes" is not limited to purchases and sales in the normal course of business but includes all transactions in which property is acquired or disposed of, including, but not limited to, corporate reorganizations.

10. "Improper taxable income." An improper taxable income is created whenever the income from Virginia sources on which Virginia may impose a tax does not accurately reflect the business done in Virginia. The intent of the parties engaging in transactions reached by this section has no effect on whether or not an improper taxable income is created.

11. "Fair profit." In determining the proper amount to be deemed income from Virginia sources, the Department will consider the profit which might have been earned by the corporation if the transactions reached by this section had occurred at a fair price. Both income and expenses resulting from the transactions will be considered.

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12. "Control." For purpose of (A) (2) (intercorporate transactions) and (A) (3) (parent corporations and subsidiaries) above, one corporation controls another if one is able to influence the manner in which the business of the other corporation is transacted. The control may be direct or indirect and result from ownership of a substantial voting interest, management contract or other agreements, depending upon the facts and circumstances.

13. "Own." For purpose of (A) (3) (parent corporations and subsidiaries) one corporation (parent) owns another corporation (subsidiary) if the parent and subsidiary are members of a parent subsidiary controlled group under I.R.C. § 1563.

14. "Consolidated report." If a consolidated report is required by the Department it shall be prepared in accordance with Section 1502 of the Internal Revenue Code and the regulations thereunder for the corporations designated by the Department, without regard to whether or not the corporations are eligible corporations under Va. Code § 58.1-442.

§ 1. In general.

Intragroup relationships, manipulation of income from business done in Virginia § 3

Factors determining whether income from business done in Virginia is distorted § 3 A

Interactions between corporate and noncorporate entities .
§ 3 D

Safe harbors § 3 E

Circumstances under which taxpayers may request that this regulation be applied to intragroup transactions .. § 4

Determining income from business done in Virginia .. § 5

Income reattribution § 5 A

Expense reattribution § 5 B

Consolidated income § 5 C

Lookback rule § 5 D

Examples § 6

§ 2. Definitions.

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

"Group" means two or more corporations, one of which is owned or controlled, directly or indirectly by the same interests. Corporations eligible for inclusion in a federal

consolidated return are members of a group. However, corporations ineligible for inclusion in a federal consolidated return (e.g., 79% stock ownership) are not precluded from being part of a group for purposes of this regulation if other facts demonstrate that one corporation has sufficient influence over another corporation's affairs to cause the corporations to enter into transactions with each other on terms that would not be offered to unrelated parties.

"Intragroup transaction" means a sale, exchange, or transfer of property or services between members of a group.

§ 3. Factors utilized in determining whether intragroup transactions distort income from business done in Virginia.

A. A group's collective income from business done in Virginia is considered to be distorted if all of the following elements exist:

1. There is an arrangement;
2. Between one or more members of a group subject to Virginia income tax, engaging in one or more intragroup transactions;
3. Where the consideration for an intragroup transaction does not reflect the true income from business done in Virginia of the participating group members; and
4. The intragroup transaction has the purpose or effect of distorting income from business done in Virginia.

B. Group members' transactions with unrelated parties are relevant, but not conclusive, in determining whether true income from business done in Virginia is reflected in intragroup transactions. If the consideration paid for fungible goods or services in an intragroup transaction is equivalent to the price charged in an established market between unrelated parties, the intragroup transaction will be deemed to reflect true income from business done in Virginia.

C. Factors creating a rebuttable presumption that income from business done in Virginia is distorted include, but are not limited to:

1. Whether intragroup services are rendered or received without adequate consideration;
2. Whether a member of the group has a significant amount of capital gains, interest, dividend, or similar income, with only minimal capital, activity, or expenses;
3. Whether there are significant intragroup lending transactions, especially where the lending party has no other significant activity, and the source of funds

is dividends, contributions by other members of the group, or borrowed funds guaranteed by, or secured by the property of, a group member other than the lending party;

4. Whether tangible or intangible property was contributed to or acquired from a group member in anticipation of a sale to an unrelated party;

5. Whether the accounting records of a group member adequately reflect the unconsolidated information required for the Virginia income tax returns of group members with Virginia nexus; or

6. Whether a corporate group engages in such a high level of activity and interaction that separate or combined group return filing cannot accurately represent the group's true income from business done in Virginia.

D. If any transaction between members of a corporate group and a noncorporate entity or entities distorts income from business done in Virginia, § 58.1-445 of the Code of Virginia may be invoked to compute the true income from business done in Virginia of all participating entities.

E. Intragroup transactions listed below are examples of transactions deemed not to cause a distortion of the participants' income from business done in Virginia. The following transactions are not all inclusive, and are merely listed as safe harbors.

1. Patent or similar intangible asset.

a. If a patent or similar asset is transferred to or from an entity subject to Virginia income tax to another group member or noncorporate entity, two-thirds of the taxable income to be derived from the patent must have been received by the transferor prior to the transfer.

b. If the taxable income to be derived from a patent or similar asset is undeterminable (in some instances, for example, a trademark), a transferor must receive a minimum payment equivalent to the asset's development cost, plus the transferor's stated internal rate of return requirement for similar assets created in the ordinary course of the transferor's business, plus a reasonable amount for anticipated future profits.

c. If a patent or similar asset is transferred between group members, with the transferor's compensation being future royalty payments, those payments must be at an arm's length price.

2. Stock representing corporation ownership or similar assets. If stock or a similar asset is transferred for less than its fair market value to or from a group member or noncorporate entity, then on any

subsequent sale of the stock, the stock must have been held by the transferee for a minimum of five years before sale or transfer by the transferee. Otherwise, the provisions of § 3 C 4 apply. See Example F.

3. Lending transactions. In an intragroup lending transaction, the lending party must be a discrete, separate business enterprise with its own employees, office space, and accounting system. Funds must be loaned at a fair market value interest rate, with collateral, payments, and credit standing equivalent to those which the borrower could obtain from an unrelated lending institution.

4. Transfer of receivables. Intragroup transfers of receivables must occur at arm's length, taking into account: the creditworthiness of the underlying debtor or debtors, the collectibility of the transferred receivables, and the rate of return required by the transferor corporation with regard to similar assets.

§ 4. Circumstances under which taxpayers may request that this regulation be applied to intragroup transactions.

In extraordinary circumstances a taxpayer may request permission to allow an adjustment under § 58.1-446 of the Code of Virginia on the grounds that income from business done in Virginia is substantially distorted as a result of law or policies peculiar to Virginia. Before such an adjustment is claimed on a Virginia return or amended return, permission must be granted by the department. An adjustment will not be permitted under this section if the claimed distortion is attributable to allocation and apportionment provisions for which the taxpayer may request an alternate method of allocation and apportionment under § 58.1-421 of the Code of Virginia.

§ 5. Determining the true income from business done in Virginia. The following remedies may be applied, either alone or in combination, if income from business done in Virginia is found to be distorted under § 3. Other remedies not listed herein may be incorporated as necessary.

A. Income reattribution.

Income may be imputed or reattributed from the group member originally reporting it to another group member, in order to reflect the income from business done in Virginia of the reporting group member.

B. Expense reattribution.

Expenses may be imputed or reattributed from the group member originally reporting them to another group member, in order to reflect the true income from business done in Virginia of the reporting group member.

C. Consolidated income.

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A group may be required to compute an apportioned tax on its consolidated income from business done in Virginia, including the income of all group members engaged in the intragroup transactions that distort income from business done in Virginia.

D. Lookback rule.

If an asset is transferred in an intragroup transaction at other than fair market value, the department may examine the transferee's profits on the asset in order to ascertain that the consideration for the transfer reflects true income from business done in Virginia. If it can be determined that the transfer was for substantially less than fair market value, the department may adjust the original transfer price of the asset, reattribute the profit to the transferor, or may consolidate the Virginia returns of the transferor and transferee, depending upon the facts and circumstances. This rule will be utilized in conjunction with the safe harbor provision in § 3 E 2.

§ 6. Examples.

A. A corporate group has the following members: a parent company (P) (not subject to Virginia income tax), a "financial corporation" (a subsidiary of the parent) not subject to Virginia income tax, or Delaware income taxation under Delaware Corporation Income Tax Code § 1902(b)(8) (D Corporation), a subsidiary (S) of the parent (files a Virginia income tax return on a separate basis), and other members unimportant to this example.

D borrows a sum of money from an unrelated third party, guaranteed by S, and then loans this money to S. S makes an annual interest payment to D equal to the interest rate charged to D by the third party, plus a percentage of the interest as a "management fee." D is not a "discrete business," because it has no employees, office space, and all decisions with regard to its activities are made by personnel of the parent company.

This transaction distorts income from business done in Virginia because employees of D rendered no services to S for which a management fee would reflect true income from business done in Virginia. Therefore, one appropriate remedy would be to disallow S's deduction for the management fee expense.

B. Assume the same facts as in A, except that D is a subsidiary of S, and that S personnel govern D's activities, resulting in an extremely high level of intragroup activity and interaction between S and D.

In this instance, an appropriate remedy would be to require a Virginia consolidated return, comprised of S and D, in order to reflect the true income from business done in Virginia of the group as a whole.

B.1. Assume the same facts as in B, except S does not have adequate income or assets to guarantee the amount borrowed by the D, and that instead, the parent

guarantees this loan. Assume further that the group originally filed a Virginia combined return, that the accounting records of the entire group do not support the separate company results of the group as shown in its Virginia income tax return, and that it is not possible to obtain the separate company operating results in a manner which may be verified through an audit.

In this instance, an appropriate remedy would be to require a Virginia consolidated return, comprised of the parent, S, and the D, in order to reflect the true income from business done in Virginia of the group as a whole.

C. Assume the same facts as in B, except that there is no intragroup loan activity. Instead, assume that S develops a patent, transfers the ownership to D for nominal consideration, and pays a royalty to D, which S deducts in determining income from business done in Virginia. The only function of D is the holding of patents.

This transaction distorts income from business done in Virginia because the consideration for the transfer of the patent did not reflect its fair market value at the time of the transfer.

One remedy is a disallowance of the royalty expense in computing S's income from business done in Virginia. Another possible remedy in this situation would be to consolidate the income of S and D, in order to accurately compute income from business done in Virginia, if there is such a high level of interaction between the two companies that it is impractical to utilize any other reporting method of determining the group's income from business done in Virginia.

D. Assume that the following group exists: a parent (P) (subject to Virginia income tax), S3 (a corporation with no assets or employees, not subject to Virginia income tax), and S4 (a subsidiary of the parent, subject to Virginia income tax).

The parent transfers its ownership interest in S4 to S3, by transferring S4's stock for nominal consideration. A short time after the transfer, S3 sells the S4 stock, realizing a substantial gain, which would have been income from business done in Virginia to the parent had the parent sold the stock.

This transaction distorts P's income from business done in Virginia because the stock transfer appears to have been made in anticipation of a sale to an unrelated party.

Under these facts, it is a rebuttable presumption that an appropriate remedy is to reattribute the capital gains income to P. Another possible remedy is to require P and S4 to file a consolidated Virginia income tax return, if the accounting records are not sufficient to support any other filing method.

E. D Corporation, a wholly owned subsidiary of P, is a "financial corporation" not subject to Delaware income

taxation under Delaware Corporation Income Tax Code § 1902(b)(8). D leases an office for its exclusive use in Delaware where it has a staff adequate to conduct all of its business affairs. D has substantial intangible assets which are loaned or otherwise made available to other group members for a consideration determined pursuant to the safe harbor provision of § 3 E 3. All of D's assets are located in Delaware, and all of its business activities, including all day to day decision making, are conducted by its own officers and employees in Delaware. D received its intangible assets from P in a transaction under Internal Revenue Code § 351.

In this instance, the group's true income from business done in Virginia is not distorted due to the intragroup lending transactions.

F. Same facts as in E, above, except that there are no intragroup lending transactions. Assume that P transfers its 100% stock ownership interest in subsidiary B to D, the financial corporation. Three years after the stock transfer, P decides that it needs to raise capital, and causes D to sell its B stock, at a substantial profit over P's original basis. In this instance, there is no distortion of the group's true income from business done in Virginia, because the taxpayer can establish that the original stock transfer to D was not in anticipation of a subsequent sale.

G. P corporation is a pharmaceutical company subject to Virginia income tax. S corporation, a wholly owned subsidiary of P corporation, is incorporated in another state and not subject to Virginia income tax. S corporation is engaged solely in the business of developing marketable products utilizing patents developed by P corporation. P transfers all of its patents to S at their estimated fair market value at the date of transfer. S has its own officers, employees, accounting records, and regularly earns income from outside the group in the ordinary course of business. Further, the transfer of patents in this manner is consistent with the pharmaceutical industry's method of doing business.

After four years, S corporation sells one of the patents to an unrelated third party in the ordinary course of business for a substantial amount over the original purchase price paid to P, and in turn, for a substantial amount over P's basis.

Transactions of this nature do not cause a distortion of P's true income from business done in Virginia, because P has established that the consideration for the transfer of its patents to S reflects fair market value, and that the transfer was not in anticipation of a subsequent sale by S to an unrelated party.

VR 630-3-446.1. Corporation Income Tax: Foreign Sales Corporations.

§ 1. Definitions.

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

"DISC" means a corporation which elected to be treated as a Domestic International Sales Corporation under I.R.C. § 991 before January 1, 1985, and which, under the Tax Reform Act of 1984, is required to end its taxable year on December 31, 1984, and, if it wishes, make a new election to be taxed as an interest charge DISC.

"FSC" means a corporation which has elected to be treated as a Foreign Sales Corporation under I.R.C. § 927 on and after January 1, 1985.

"Interest charge DISC" means a corporation which has elected to be treated as a Domestic International Sales Corporation under I.R.C. § 992 on and after January 1, 1985.

"Small FSC" means a corporation which has elected to be treated as a Small Foreign Sales Corporation under I.R.C. § 927 on and after January 1, 1985.

§ 2. DISC prior to January 1, 1985.

A. All DISC's are required by federal law to end their taxable years on December 31, 1984. Distributions of DISC income accumulated prior to December 31, 1984 are deemed to be made from previously taxed income and are not included in the federal taxable income of the recipient.

B. The department has required a taxpayer owning a DISC to make an adjustment under § 58.1-446 of the Code of Virginia in each year, including the taxable year ended December 31, 1984, in which the taxpayer pursuant to federal law attributed some of its taxable income to its DISC in an amount unrelated to the business done by the DISC. Therefore, no adjustments are required with respect to distributions received by a taxpayer from accumulated DISC income and excluded from the taxpayer's federal taxable income.

§ 3. Interest charge DISC on and after January 1, 1985.

A. For transactions occurring on and after January 1, 1985, a taxpayer may attribute some of its income to an interest charge DISC by using certain administrative pricing rules which expressly exempt the DISC from complying with I.R.C. § 482 (arms length pricing.) An adjustment under § 58.1-446 of the Code of Virginia is required when any of a taxpayer's income is attributed to an interest charge DISC in an amount unrelated to the business done by the interest charge DISC.

B. The adjustment is required with respect to any interest charge DISC which conducts no business or which does conduct business but such business activity is unrelated to the amount of the taxpayer's income attributed to the interest charge DISC.

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C. When an adjustment under § 58.1-446 of the Code of Virginia is required, the adjustment will be based upon consolidation of the interest charge DISC with the taxpayer unless the taxpayer shows to the satisfaction of the Tax Commissioner that some other method of computing the adjustment is more equitable.

§ 4. FSC and small FSC.

No adjustment under § 58.1-446 of the Code of Virginia is required with respect to ownership of a Foreign Sales Corporation or a Small Foreign Sales Corporation.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

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

Public Hearing Date: December 21, 1992 - 11 a.m.

Written comments may be submitted until December 21, 1992.

(See Calendar of Events section for additional information)

Summary:

Amendment 11 proposes to incorporate, by reference, changes that were made by U.S. DOT to Title 49, Code of Federal Regulations (CFR), Parts 171-180, 383, and 390-397 from July 1, 1991, to June 1, 1992. These changes include:

1. Revision to Hazardous Materials Regulations (HMR) to simplify and reduce the volume of the HMR, enhance safety through better classification and packaging, promote flexibility and technological innovation in packaging, reduce the need for exemption from the HMR, and facilitate international commerce. U.S. DOT determined that this final rule: (i) is not a significant rule and does not require a Regulatory Impact Analysis; (ii) will not have a significant impact on the manufacturers of packaging and containers because only a small fraction of small entities output is used for hazardous materials, and only a portion of their hazmat packaging would be affected; and (iii) would not likely increase their costs very significantly, because the cost of compliance would represent a very small fraction of their total costs;

2. Requires interstate motor carriers subject to the Federal Highway Authority's (FHWA's) controlled substances testing regulations to begin random and certain mandatory post-accident drug testing of their drivers. This action is necessary to notify interstate motor carriers subject to Title 49, Code of Federal

Regulations (CFR), Part 391, subpart H, that the injunction against the FHWA's drug testing program has been dissolved and that random and post-accident testing, previously deferred, must be implemented. The effective date is on November 14, 1991, for motor carriers with 50 or more drivers subject to testing, and on January 1, 1992, for all other motor carriers. U.S. DOT determined this final rule: (i) is not a major rule or a significant regulation under the regulatory impact review policies; (ii) will not have a significant economic impact on a substantial number of small entities; and (iii) does not impose additional requirements and has the net result of reducing costs imposed under the final rule without reducing safety;

3. Revision of Parts 171-180, with respect to hazard communication, classification, descriptions on shipping papers, product marking, labeling and vehicle placarding, and packaging requirements to allow adequate time for persons subject to the HMR to evaluate domestic products for changes. The changes were based on the U.N. Recommendations and Research and Special Programs Administration (RSPA's) own initiative and are in response to petitions for reconsideration addressing the transitional provisions contained in the final rule. U.S. DOT determined this final rule (i) is not a major rule under Executive Order 12291; (ii) does not require a Regulatory Impact Analysis; (iii) is not significant under DOT's regulatory policies; (iv) will not have a significant economic impact on a substantial number of small entities; and (v) would impose only minor costs with respect to hazard communication requirements;

4. Revision to HMR to communicate the hazards of materials in a liquid phase having temperatures at or above 100°C (212°F), materials in a solid phase having temperatures at or above 240°C (464°F), and flammable liquid materials in a liquid phase with flash points at or above 37.8°C (100°F) which are intentionally heated and offered for transportation in bulk quantities at or above their flash points. The changes are necessary to alert the public and emergency response personnel to the risks posed by these materials and to specify minimum level packaging for them in order to minimize the possibility of their unintentional release. U.S. DOT determined this final rule (i) does not impose additional requirements; (ii) has the net result of reducing the costs imposed under the final rule; (iii) will not have a significant economic impact on a substantial number of small entities; and (iv) does not require a Regulatory Impact Analysis, or an environmental impact statement;

5. Federal Railroad Administration (FRA) is amending Part 173 to conform to the mandate of § 19 of the Hazardous Materials Transportation Uniform Safety Act of 1990, which, effective July 1, 1991, prohibits the transportation in commerce of all hazardous

materials in tank cars with air brake equipment support attachments welded directly to the shell. U.S. DOT determined this final rule (i) is nonmajor under Executive Order 12291; (ii) is considered significant under DOT policies and procedures because this rule involves the safety of hazardous materials transportation in tank care; (iii) will not have a significant economic impact on a substantial number of small entities; and (iv) the cost of complying with existing substantive regulations and industry standards is not being increased;

6. Amending the HMR to require periodic requalification of acetylene cylinders, establishes a schedule for retesting and requalifying acetylene cylinders, and requires the cylinders to be visually inspected externally before each filling. The intended effect of these regulatory changes is to improve the safe transportation of acetylene through detection of cylinder deficiencies. U.S. DOT determined this final rule (i) is not major under Executive Order 12291; (ii) is not significant under DOT Regulatory Policies and Procedures; (iii) will not affect not-for-profit enterprises or small governmental jurisdictions; (iv) does not require an environmental impact statement under the National Environmental Policy Act; and (v) will impose minor costs on owners and users of acetylene cylinders with respect to the requalification requirements;

7. FHWA is allowing limited waivers from 49 CFR Part 383 for certain employees of custom harvesters, farm retail outlets and suppliers, agri-chemical businesses, and livestock feeders. The FHWA is authorizing the states to waive, at their option, these employees from the CDL knowledge and skill testing requirements, and issue these employees restricted CDLs for a seasonal period or periods not to exceed a total of 180 days in any 12-month periods, subject to certain conditions. U.S. DOT determined that this final rule (i) is not a major rule under Executive Order 11291; (ii) is a significant rule under the regulatory procedures; (iii) the net result is that costs imposed under the final rule are reduced, but without a reduction in safety; (iv) does not impose additional requirements and, in fact, provides relief in some areas; and (v) will not have a significant economic impact on a substantial number of small entities;

8. Establishment of a new preemption standard to the HMTA for state, political subdivision, and Indian tribe requirements that concern certain covered subjects amended by HMTUSA. RSPA is amending its regulation to define the preemption standard. The intended effect of these changes is to clarify the regulations and shorten the process for obtaining determinations; and

9. Corrections, editorial changes, clarifications, extensions, delaying of effective dates of final rules, and other minor revisions.

VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise.

“Explosive” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified in 49 Code of Federal Regulations (CFR) Parts 170 through 177.

“Hazardous material” means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so determined by regulation or order.

“Transport” or “Transportation” means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

PART II. GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

§ 2.1. Authority for regulation.

A. These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials.

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than applicable federal regulations.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to regulate the transportation of hazardous materials in Virginia.

§ 2.3. Administration of regulations.

A. The Director of the Department of Waste

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Management is designated by the Virginia Waste Management Board with the responsibility to carry out these regulations.

B. The Department of Waste Management is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia.

§ 2.4. Application of regulations.

Notwithstanding the limitations contained in Title 49, Code of Federal Regulations, § 171.1(a)(3), and subject to the exceptions set forth in § 2.5 below, these regulations apply to any person who transports hazardous materials, or offers such materials for shipment.

§ 2.5. Exceptions.

Nothing contained in these regulations shall apply to regular military or naval forces of the United States, nor to the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this Commonwealth, providing the same are acting within their official capacity and in the performance of their duties; nor to the transportation of hazardous radioactive materials in accordance with § 44-146.30 of the Code of Virginia.

§ 2.6. Regulations not to preclude exercise of certain regulatory powers.

Pursuant to § 10.1-1452 of the Code of Virginia, the provisions of these regulations shall not be construed so as to preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

§ 2.7. Transportation under United States Regulations.

Pursuant to § 10.1-1454 of the Code of Virginia, any person transporting or offering for shipment hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of these regulations, except when such transportation is excluded from regulation under the laws or regulations of the United States.

§ 2.8. Enforcement.

A. Law-enforcement officers.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special

Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any regulation promulgated hereunder, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials. Pursuant to § 10.1-1455 of the Code of Virginia, violation of these regulations is a Class 1 misdemeanor.

B. Civil judicial enforcement of these regulations shall be governed by § 10.1-1455 of the Code of Virginia.

§ 2.9. Application of Administrative Process Act.

The provisions of the Virginia Administrative Process Act, codified as § 9-6.14:1 *et seq.* of the Code of Virginia, govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings hereunder.

PART III. COMPLIANCE WITH FEDERAL REGULATIONS.

§ 3.1. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of ~~June 30, 1991~~ *June 1, 1992*, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations (CFR) as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. Hazardous Materials Program Procedures in 49 CFR, Part 107, Subpart B.
2. Hazardous Materials Regulations in 49 CFR, Parts 171 through 177.
3. Shipping Container Specifications in 49 CFR, Part 178.
4. Specifications for Tank Cars in 49 CFR, Part 179.
5. Qualifications and Maintenance of Cargo Tanks in 49 CFR, Part 180.
6. Commercial Licensing Requirements in 49 CFR, Part 383.
7. Motor Carrier Safety Regulations in 49 CFR, Parts 390 through 397.

PART IV. HAULING EXPLOSIVES IN PASSENGER-TYPE VEHICLES.

§ 4.1. Hauling explosives in passenger-type vehicles.

Explosives shall not be transported in or on any motor vehicle licensed as a passenger vehicle or a vehicle which is customarily and ordinarily used in the transportation of passengers except upon written permission of the State Police and under their direct supervision and only in the amount and between points authorized. If the movement is intracity, the permission of the properly designated authority of such city shall be secured. Dangerous articles, including small arms ammunition, but not including other types of explosives, may be transported in passenger-type vehicles provided the maximum quantity transported does not exceed 100 pounds in weight. Such transportation shall not be subject to these rules.

PART V. OUT OF SERVICE.

§ 5.1. Out of service.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have met the qualifications set forth in § 2.8, above, shall be the agents authorized to perform inspections of motor vehicles in operation and to declare and mark vehicles "out of service" as set forth in 49 CFR § 396.9.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-01-01. Fees for Permits and Certificates.

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Public Hearing Dates:

December 9, 1992 - 7 p.m.
December 10, 1992 - 11 a.m.
December 10, 1992 - 7 p.m.
December 14, 1992 - 7 p.m.
December 16, 1992 - 2 p.m.
December 17, 1992 - 1 p.m.
Written comments may be submitted until December 18, 1992.

(See Calendar of Events section
for additional information)

Summary:

In accordance with Article 2.1 of the State Water Control Law titled Permit Fees, the State Water Control Board proposes to adopt a regulation setting forth a fee assessment and collection system. The regulation would become effective July 1, 1993.

Fees are to pay for part of the cost of processing

applications to issue, reissue, or modify permits. These fees will also provide for payment to the Departments of Game and Inland Fisheries and Conservation and Recreation for the permits and certificates issued by the board which they are required by law to review.

Fees are limited to maximums which are specified in statute and must be based on the time and complexity involved in reviewing the applications and developing and issuing permits. Fees for permit and certificate issuance and reissuance were developed on this basis. Fees for modifications will be prorated based on the number of years remaining on the permit. Modifications requested by the permit or certificate holder will be based on the fees for permit or certificate issuance or reissuance. As required by the fee legislation, fees for agency initiated modifications are 75% of the fees for issuances, reissuances, and permittee-requested modifications. The total of all fees charged for agency initiated modifications over the life of the permit cannot be more than the fee that would be charged for issuance of a new permit or reissuance of an existing permit.

Fees will be charged all applicants for new permits, reissued permits and permit modifications who applied on or after July 1, 1992, and where a new, reissued, or modified permit has not been issued as of the date the regulation takes effect. Once the fee regulation takes effect, all fees will be due with the application for the permit or certificate. Applicants who applied on or after July 1, 1992, where permit processing is not complete before the effective date of the regulation, will be required to pay the full fee before a permit is issued unless a public notice has been published. If a public notice has been published, 50% of the full fee will be due prior to issuance of the permit.

Exempt from payment of fees are applicants who submitted complete applications before the fee legislation took effect on July 1, 1992, whether or not a permit or certificate is issued before the effective date of this regulation. Applicants who filed applications on or after July 1, 1992, who are issued a permit before the regulation takes effect are also exempt from paying a fee. No fee will be required of any applicant for a minor modification as set out in the board's various permit regulations.

The proposed regulation has considered concerns raised during the public comment period on the Notice of Intended Regulatory Action.

VR 680-01-01. Fees for Permits and Certificates.

PART I. GENERAL.

§ 1.1. Definitions.

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Unless otherwise defined herein or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's Permit Regulation VR 680-14-01, § 1.1; the board's Virginia Water Protection Permit Regulation VR 680-15-02, § 1.1; the board's Surface Water Management Area Regulation VR 680-15-03, § 1.1; and the Ground Water Management Act of 1992, § 62.1-255.

"Applicant" means for the purpose of this regulation any person filing an application for issuance, reissuance, or modification, except as exempted by § 1.5, of permit or certificate issued pursuant to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the purpose of this regulation the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit or certificate issued pursuant to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit or certificate requested by the permit or certificate holder and not exempted by § 1.5, the application shall consist of the formal written request and any accompanying documentation submitted by the permit or certificate holder to initiate the modification. In the case of modifications to an existing permit or certificate initiated by the State Water Control Board and not exempted by § 1.5, the application shall consist of the written response and any accompanying documentation submitted by the permit or certificate holder in response to the board's action to initiate the modification.

"Existing permit" means for the purposes of this regulation a permit or certificate issued by the board and currently held by an applicant.

"Modification" means for the purposes of this regulation modification or amendment of an existing permit or certificate before its expiration.

"New permit" means for the purposes of this regulation a permit or certificate issued by the board to an applicant that does not currently hold and has never held a permit or certificate at that location.

"Revoked permit" means for the purposes of this regulation an existing permit or certificate which is terminated before its expiration.

"VWP Category 1 Project" means a project requiring complex staff review including, but not limited to, those which affect instream flows such as reservoirs, hydropower impoundments, and surface water withdrawals; major subdivisions, industrial parks, commercial developments, and regional stormwater facilities which cumulatively impact more than 10 acres of wetlands or result in channel modifications or relocation of perennial streams of 60 linear feet or more; projects in

waters containing wild trout or threatened or endangered species; new marinas, navigational dredging projects, and instream sand and gravel mining operations.

"VWP Category 2 Project" means a project requiring moderately complex staff review including, but not limited to, those impacting between one and 10 acres of wetlands, stream channel modifications, channelizations or relocations less than 60 linear feet; impoundments in nonperennial streams for the purpose of stormwater management which do not require a VPDES permit; rip rap and bank stabilization of 500 feet or more; expansion of existing marinas and dredging of navigation channels.

"VWP Category 3 Project" means a project requiring routine staff review including, but not limited to, those which impact one acre or less of isolated nontidal wetlands; bulkheads, groins, and jetties comprised of nonerodible materials free from debris and toxic constituents; dredging for single residence boatlips; perpendicular sub-bed crossings of pipelines for sewer and other utilities in water which do not contain wild trout or threatened or endangered species; impoundments in nonperennial streams, as well as relocations and channel modifications of such streams, provided that wetland impacts do not exceed one acre, and the stream does not contain threatened or endangered species.

§ 1.2 Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue from the applicant for such permit or certificate. These regulations establish the required fee assessment and collection system.

§ 1.3. Authority.

The authority for these regulations is pursuant to §§ 62.1-44.15(7) and (10) and 62.1-44.15:6 of the Code of Virginia.

§ 1.4. Applicability.

A. This regulation applies to:

1. All applicants for issuance of a new permit or certificate or reissuance of an existing permit or certificate who apply on or after July 1, 1992, that have not been issued a permit or certificate as of the effective date of this regulation. The fee due shall be as specified under § 3.2 or § 3.4 of this regulation.
2. All permit or certificate holders who request that an existing permit or certificate be modified, except

as specifically exempt under § 1.5 of this regulation, who apply on or after July 1, 1992, whose permit or certificate has not been modified as of the effective date of this regulation. The fee due shall be as specified under § 3.2 or § 3.4 of this regulation.

3. All permit or certificate holders whose existing permit is modified by an action initiated by the board, except as specifically exempt under § 1.5 of this regulation, who apply on or after July 1, 1992, whose permit or certificate has not been modified as of the effective date of this regulation. The fee due shall be as specified under § 3.3 or § 3.4 of this regulation.

B. An applicant for a permit or certificate involving a revoked permit which is to be reissued shall be considered an applicant for a new permit. The fee due shall be as specified under § 3.2 or § 3.4 of this regulation.

§ 1.5. Exemptions.

No permit application fees will be assessed to:

1. Applicants for permits or certificates who submitted complete applications before July 1, 1992, whether or not a permit or certificate is issued before the effective date of this regulation.
2. Applicants for permits or certificates who submitted complete applications on or after July 1, 1992, where permits or certificates have been issued before the effective date of this regulation.
3. Virginia Pollutant Discharge Elimination System permit holders who request minor modifications as specified in § 5.4 B of VR 680-14-01.
4. Virginia Pollution Abatement permit holders who request minor modifications as specified in § 5.4 C of VR 680-14-01.
5. Virginia Water Protection permit holders who request minor modifications as specified in § 4.4 of VR 680-15-02.
6. Surface Water Withdrawal permit or certificate holders who request minor modifications as specified in § 4.4 of VR 680-15-03.
7. Permit holders who request minor modifications of permits for the withdrawal of ground water issued pursuant to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

PART II.

PAYMENT, DEPOSIT AND USE OF FEES.

§ 2.1. Due date.

A. Except as specified in § 2.1 B, all permit application fees are due on the day an application is submitted and

must accompany the application. Applications will not be processed without payment of the required fee. No permit will be automatically continued without payment of the required fee.

B. Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued before the effective date of this regulation, will be assessed fees as specified in § 3.4. Payment of the fee shall be made within 60 days of the applicant's notification by the board of the fee due. No permit will be issued without payment of the required fee.

§ 2.2. Method of payment.

Fees shall be paid by check, draft or postal money order payable to the Commonwealth of Virginia, State Water Control Board and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee.

§ 2.3. Incomplete payments.

All incomplete payments will be deemed nonpayments.

§ 2.4. Deposit and use of fees.

All fees collected pursuant to this regulation shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in § 62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

PART III.

DETERMINATION OF FEE AMOUNT.

§ 3.1. General.

A. Each application for a new permit or certificate, each application for reissuance of a permit or certificate, each application for modification of a permit or certificate, and each revocation and reissuance of a permit is a separate action and shall be assessed a separate fee. The fees for each type of permit or certificate which the board has the authority to issue, reissue or modify will be as specified in this part.

B. Fees for modifications requested by the permit or certificate holder will be prorated based on the number of years from the date of application until the permit expires. The annual prorated amount is equal to the fee for issuance or reissuance as shown in § 3.2 divided by the total term of the permit as indicated in the permit at issuance. The modification fee is the annual prorated amount multiplied by the number of years rounded to the

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nearest whole year from the date of application until the permit expires.

C. Fees for modifications initiated by the board will be prorated based on the number of years from the date of application until the permit expires. The annual prorated amount is equal to the fee for modifications initiated by the board, which is 75% of the fee for issuance or reissuance, as shown in § 3.3 divided by the total term of the permit as indicated in the permit at issuance. The modification fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the date of application until the permit expires.

D. In no case will the total fees charged for modifications initiated by the board over the life of the permit or certificate be greater than the cost for issuance of a new permit or certificate or reissuance of an existing permit or certificate as specified in § 3.2.

§ 3.2. Fee schedules for new permit issuance, existing permit reissuance and for calculation of the fee for permit or certificate modification requested by the permit or certificate holder.

The following fee schedules apply to applications for issuance of a new permit or certificate and reissuance of an existing permit or certificate. The amount of the fee for a modification requested by the permit or certificate holder shall be determined as specified in § 3.1 B utilizing the schedules in this section.

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$8,000
VPDES Municipal Major	\$7,100
VPDES Industrial Minor/No Standard Limits ..	\$3,400
VPDES Industrial Minor/Standard Limits	\$2,200
VPDES Municipal Minor/100,000 GPD or More	\$2,500
VPDES Municipal Minor/More Than 10,000 GPD—Less Than 100,000 GPD	\$2,000
VPDES Municipal Minor/10,000 GPD or Less ..	\$1,800
VPDES General	\$ 200

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation ..	\$1,000
VPA Intensified Animal Feeding Operation	\$ 500
VPA Industrial Wastewater Operation	\$3,500

VPA Industrial Sludge Operation	\$2,500
VPA Municipal Wastewater Operation	\$4,500
VPA Municipal Sludge Operation	\$2,500
VPA General Permits and any other operation not specified above	\$ 250

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$3,000
VWP Category II Project	\$2,100
VWP Category III Project	\$ 900
VWP General	\$ 400
VWP Waivers	\$ 300

4. Surface Water Withdrawal (SWW) permits or certificates issued pursuant to Chapter 24 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	\$ 250
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	\$ 400
Agricultural withdrawal of 300 million gallons or greater in any single month	\$ 600
Nonagricultural withdrawal	\$4,000

5. Permits for the withdrawal of ground water issued pursuant to Chapter 25 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	\$ 250
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	\$ 400
Agricultural withdrawal of 300 million gallons or greater in any single month	\$ 600
Nonagricultural withdrawal	\$2,000

§ 3.3. Fee schedules for calculation of the fee for permit or certificate modification of permits or certificates initiated by the board.

The amount of the fee for a modification initiated by the board shall be determined as specified in § 3.1 C utilizing the schedules in this section.

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1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$6,000
VPDES Municipal Major	\$5,325
VPDES Industrial Minor/No Standard Limits ..	\$2,550
VPDES Industrial Minor/Standard Limits	\$1,650
VPDES Municipal Minor/100,000 GPD or More	\$1,875
VPDES Municipal Minor/More Than 10,000 GPD— Less Than 100,000 GPD	\$1,500
VPDES Municipal Minor/10,000 GPD or Less ..	\$1,350
VPDES General	\$ 150

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation ..	\$ 750
VPA Intensified Animal Feeding Operation	\$ 375
VPA Industrial Wastewater Operation	\$2,625
VPA Industrial Sludge Operation	\$1,875
VPA Municipal Wastewater Operation	\$3,375
VPA Municipal Sludge Operation	\$1,875
VPA General Permits and any other operation not specified above	\$ 187

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$2,250
VWP Category II Project	\$1,575
VWP Category III Project	\$ 675
VWP General	\$ 300
VWP Waivers	\$ 225

4. Surface Water Withdrawal (SWW) permits or certificates issued pursuant to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	\$ 187
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	\$ 300

Agricultural withdrawal of 300 million gallons or
greater in any single month

Nonagricultural withdrawal

5. Permits for the withdrawal of ground water issued pursuant to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million
gallons in any single month

Agricultural withdrawal greater than 150 million
gallons but less than 300 million gallons in any
single month

Agricultural withdrawal of 300 million gallons or
greater in any single month

Nonagricultural withdrawal

§ 3.4. Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued as of the effective date of this regulation, shall be assessed the applicable fee as specified in §§ 3.1, 3.2 or § 3.3, as appropriate, except that where a public notice has been published before the effective date of this regulation, the fee shall be 50% of the fee specified in §§ 3.1, 3.2 or § 3.3.

PART IV. MISCELLANEOUS.

§ 4.1. Delegation of Authority.

The executive director, or his designee, may perform any action of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF COMMERCE

final regulation.

Title of Regulation: VR 190-01-1. Regulations Governing Employment Agencies. REPEALED.

VR 190-01-1:1. Regulations Governing Employment Agencies.

Title of Regulation: VR 190-01-1:1. Regulations Governing Employment Agencies.

PART I. GENERAL.

Statutory Authority: § 54.1-1302 of the Code of Virginia.

§ 1.1. Definitions.

Effective Date November 19, 1992.

The following words and terms, when used in these regulations, have the following meanings, unless the context clearly indicates otherwise:

Summary:

The regulation requires the licensure of employment agencies and the restriction of individuals who act as employment counselors at those businesses. This regulation applies to approximately 46 licensed employment agencies and an estimated 200 employment counselors. There is no requirement under the current regulation that employment counselors be registered and therefore the figure of 200 employment counselors is an estimate based upon information received from the industry.

["Duties and tasks" means the principal responsibilities required of the incumbent and the activities identified by the employer as necessary to discharge those responsibilities. Incidental tasks normally associated with the occupation need not be included.

The regulation separates entry, renewal and reinstatement requirements. It also separates standards of conduct from standards of practice. The regulation has been completely rewritten and reorganized. Certain requirements for receipts, records and contracts deleted from the statute are included in the final regulation. A number of provisions of the repealed regulations have been retained. Fees throughout the regulation have been adjusted in order to conform with the requirements of § 54.1-113 of the Code of Virginia to assure that the expenses of this program are adequately covered by revenues generated from the regulants.

"Laid off" means the loss of gainful employment with a specific employer for an indefinite period of time.]

"Licensee" means any person holding a license issued by the department to act as an employment agency as defined in § 54.1-1300 of the Code of Virginia.

The final regulation requires initial contracts and position acceptance contracts to have separate and more appropriate disclosure statements than the disclosure statement initially proposed. The minimum elements for job descriptions were also revised to limit the requirement to list benefits to just paid or unpaid health insurance benefits and to allow a written contract signed by the client and the employer to meet the job description requirements for occupations, such as teaching, where written contracts are customary. A number of the provisions of the repealed regulation were added to the final regulation to continue the same level of protection to the public. The proposed requirement for a \$10,000 bond was changed to a requirement for a \$55,000 bond in the

"Registrant" means any person holding a registration issued by the department to act as an employment counselor as defined in § 54.1-1300 of the Code of Virginia.

PART II. ENTRY.

§ 2.1. Requirement for licensure of employment agency.

Every person seeking a license as an employment agency shall file an application on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of \$150 and, if an individual, shall be at least 18 years of age.

§ 2.2. Bond.

Every applicant for an employment agency license shall submit to the department evidence that the applicant has secured a surety bond in the penal sum of [~~\$10,000~~ \$5,000] for each license.

§ 2.3. Controlling person.

A. Every applicant for an employment agency license shall designate a controlling person [, who shall be at least 18 years of age,] at the time of application on a

form furnished by the department. This controlling person shall be responsible for the employment agency's compliance with the provisions of Chapter 13 (§ 54.1-1300 et seq.) of Title 54.1 of the Code of Virginia and this regulation.

B. Any person acting as a controlling person on June 30, 1992, shall be deemed designated as such with the department upon the department's receipt of notification on a form furnished by the department, accompanied by a nonrefundable application fee of \$25. This notification and fee must be received by the department no later than December 31, 1992.

§ 2.4. Change of controlling person.

Each employment agency shall notify the department of a change in its controlling person. The employment agency shall designate the new controlling person in writing within 30 days after the change on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of \$25.

§ 2.5. Requirements for registration of employment counselors.

A. Every individual seeking registration as an employment counselor shall file an application on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of \$45, and shall be at least 18 years of age.

B. Any individual seeking registration as an employment counselor may request from the department at the time the application is received a written statement of conditional registration authorizing the individual to be employed as an employment counselor for no more than 30 days while the department determines if the applicant is eligible for registration. [Such letter of conditional registration shall be valid for the shorter period of 30 days, or until registration is granted or denied.]

C. Any person acting as an employment counselor on June 30, 1992, shall be deemed registered with the department upon the department's receipt of his application for registration on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of \$45. This notification and fee must be received by the department no later than December 31, 1992.

§ 2.6. Good standing.

All applicants for licensure as an employment agency [, for approval as a controlling person] or [for] registration as an employment counselor shall be in good standing in every jurisdiction where licensed or registered to perform these activities. The department may deny the application of any person who has had a license or registration suspended, revoked or surrendered in conjunction with any disciplinary action as an employment agency or

employment counselor. [The department may deny the application for approval as a controlling person of any person who was a part of the responsible management of any employment agency subject to disciplinary action by the Commonwealth or any other jurisdiction.]

§ 2.7. Criminal conviction.

The department may deny licensure or registration to any applicant who has been convicted of a felony or misdemeanor involving fraud, misrepresentation or theft. Any plea or nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as [prima facie] evidence of such conviction.

PART III. RENEWAL.

§ 3.1. Renewal required.

Licenses [and registrations] issued under [these regulations this regulation] shall expire on January 31 of each year. [Registrations issued under this regulation shall expire 12 months from the last day of the month wherein issued.]

§ 3.2. Procedures for renewal.

A. The department shall mail a renewal application to the licensee or registrant at the last known address. The notice shall outline the procedure for renewal. Failure to receive a renewal notice shall not relieve the licensee or registrant of the obligation to renew. If the licensee or registrant fails to receive the renewal notice, a copy of the license or registration may be submitted with the required fee as an application for renewal.

B. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring renewal of a license or registration shall return to the department the renewal application forms and the appropriate fee as outlined in § 3.3 of these regulations. The date of receipt of the renewal application and fee by the department or its agent is the date which will be used to determine if receipt is timely.

§ 3.3. Renewal fees.

All fees for renewal are nonrefundable and are as follows:

Employment agency	\$100
Employment counselor	\$ 25

§ 3.4. Denial of renewal.

The department may deny renewal of a license or

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registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

PART IV. REINSTATEMENT.

§ 4.1. Failure to renew - reinstatement required.

A. Any licensee or registrant failing to apply for renewal of a license or registration within 30 days following the expiration date printed on the license or registration shall be required to reinstate the license or registration.

B. Applicants for reinstatement shall meet the requirements of Part III of these regulations. An applicant for reinstatement of a license shall submit a reinstatement application fee of \$200. An applicant for reinstatement of registration shall submit a reinstatement application fee of \$50. Reinstatement fees are nonrefundable.

C. No license or registration shall be reinstated when the application and fee are received by the department more than six months after the expiration date printed on the license or registration. After that date the applicant shall meet the then current entry requirements and apply for a new license or registration. The date on which the application and fee are received by the department or its agent is the date which will be used to determine if receipt is timely.

§ 4.2. Denial of reinstatement.

The department may deny reinstatement of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

PART V. STANDARDS OF PRACTICE.

§ 5.1. Transfer of license or registration prohibited.

A. Each license shall be issued to the legal business entity named on the application, whether it is a sole proprietorship, partnership, corporation, association or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be transferred or otherwise assigned to another legal entity. [All employment agency business shall be conducted under the name printed on the license.]

B. Each registration shall be issued to the individual named on the application and shall be valid only for the individual named on the registration. No registration shall be transferred or otherwise assigned to another individual. [All employment agency business shall be conducted under the name printed on the registration.]

§ 5.2. Change of name or address.

A. Each licensee shall upon application and at all times keep the department informed of its physical address and shall report in writing to the department any change in its name or physical address no later than 15 days after the effective date of that change. Name change reports shall be accompanied by certified true copies of the documents which establish the name change. A post office box is not a physical address.

B. Each registrant shall upon application and at all times keep the department informed of his physical address and shall report in writing to the department any change in his name or physical address no later than 15 days after the effective date of that change. A post office box is not a physical address.

§ 5.3. Change of ownership or entity.

A. Each licensee shall report in writing to the department any change in its ownership or changes in the officers of a corporation which do not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change.

B. A new license is required whenever there is any change in the ownership or manner of organization of the licensee which results in the creation of a new legal entity.

§ 5.4. Employment agency office.

A. Each employment agency shall maintain an office located in the Commonwealth which meets the requirements established by § 54.1-1303 C of the Code of Virginia [and shall allow the department or any of its agents access to its office during normal business hours.]

B. Any license issued to an employment agency and any registration issued to an employment counselor shall be displayed in a conspicuous place in the employment agency.

§ 5.5. Contracts.

A. Each contract between an employment agency and a client shall be in writing and an executed copy of each contract shall be provided to the client.

B. Each contract [must include the name, address and telephone number of the department shall state in a prominent place, in bold face letters, "Licensed by the Department of Commerce, Commonwealth of Virginia, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8500."]

C. [Each contract shall include the following statement: "If you sign this contract, you may be responsible for the payment of fees to the employment agency, even if you do not obtain lasting employment and even if you do not like the job. This contract contains our entire agreement with

you and any oral representations made by your employment counselor or anyone else that are not contained in this contract may not be relied upon. Read this contract and be certain that you understand all provisions before you sign it." This statement Each contract shall contain a disclosure statement as specified below which] shall be enclosed in a conspicuous border [or shall be printed in a bold face or distinctive type face] and shall be placed immediately above the signature line of the contract.

[1. Each initial contract shall include the following statement: "Read this contract and be certain that you understand all of its provisions before you sign it. If you sign this contract and accept a job found for you by this employment agency, you will be responsible for the payment of the fee stated on this contract unless your employer agrees to pay it for you. You are not obligated to accept any job found for you by this employment agency. The fee will be due when you work or when you sign a position acceptance agreement naming your employer and describing your job. The employment agency must give you a copy of this contract after you sign it."

2. Each position acceptance contract shall include the following statement: "Read this contract and be certain that you understand all of its provisions before you sign it. If you sign this contract, you will be responsible for the payment of the fee to the employment agency unless your employer has agreed to pay it for you. This contract describes the job you are accepting or has information describing the job attached to it. This contract and its attachments constitute the entire agreement and any oral representations or promises made by the employment agency or anyone else may not be relied upon. Your fee may be refundable under certain circumstances but this contract does not constitute a guarantee that you have found lasting employment or that you will like the job. The employment agency must give you a copy of this contract after you sign it."]

D. Each initial contract shall state in bold letters enclosed in a conspicuous border the gross amount of any fee charged the client and the duration of time upon which the fee is based. Each initial contract shall also state the name and address of the employment agency, the time when the fee will first be due, how the fee is to be paid, and the period of time over which the fee is to be paid. Each initial contract shall disclose to the client the total cost to the client and if the agency uses a fee schedule, it shall be set out in the initial contract.

E. Each position acceptance contract shall disclose that the employment agency [may shall] not provide or offer to provide to any employer the placement fee paid by the client, or any portion of that fee, for the agency's services in obtaining employment for the client. Each position acceptance contract shall also disclose that no person or any member of his immediate family who has any interest

in the employment agency shall refer any client to any lending institution in which the person or any member of his immediate family has a financial interest.

F. Each position acceptance contract shall state the wage or salary of the position accepted and shall contain a job description of the position accepted by the client. The minimum elements of the job description shall include, but are not limited to:

1. Job title;
2. Name of the employer;
3. Address of the employer;
4. Location of the employment if different from the address of the employer;
5. Wage or salary;
- 6.[Benefits The provision of any paid or unpaid health insurance] ;
7. Days and hours of work;
8. Paid holidays;
9. Duties and tasks to be performed; and
10. Training and promotional opportunities.

[The provisions of this subsection shall be deemed to be met when an employment contract of the nature customarily used in the client's occupation has been signed by the client and the employer and a copy of same is attached to the position acceptance contract.]

§ 5.6. Refunds.

A. If the employment is terminated within 12 weeks from the initial date of employment, and the client is due a refund, the employment agency shall refund to the client a portion of the fee equal to one-twelfth of that fee for each week or portion of a week that the client was not employed.

B. Circumstances where the client is due a refund as stated above include, but are not limited to:

1. When employment is terminated by the employer through no fault of the client;
2. When the client voluntarily terminates the employment because the job was not as represented by the employment agency.

C. Circumstances that are deemed no fault of the client include, but are not limited to:

1. When the employer goes out of business;

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2. When the client receives from the employer a payroll check which is not honored by the bank upon which it is drawn;

3. When the client is laid off;

4. When a change in the nature [of the duties and tasks] of the job occurs;

5. When the client [~~is unable~~ does not have the knowledge, skills and abilities] to perform the [~~tasks and duties~~ duties and tasks] of the job; and

6. When the employment agency caused to be published false or misleading advertising material.

[D. Circumstances that are deemed to be the fault of the client include, but are not limited to:

1. Violating the employer's policies or rules;

2. Failure to perform the duties and tasks of the job;

3. Misrepresenting or withholding any requested information that would cause the employer to refuse employment; or

4. Failing to fulfill, either temporarily or permanently, the terms of employment because of a felony or misdemeanor conviction after being employed.]

[~~D. E.~~] A client shall not be due a refund if the client misrepresented his qualifications for the employment.

[~~E. F.~~] Any refund due to a client from an employment agency shall be made within 30 days from the date [it becomes the licensee determines a refund is] due.

§ 5.7. Receipts.

Every transaction involving the making of a payment to an employment agency by a client shall require a numbered receipt. A copy of the receipt shall be provided to the client and one copy shall be maintained by the employment agency. Every receipt shall contain the following:

1. Name of applicant;

2. Date and amount of payment;

3. Purpose of payment;

4. Name and address of employment agency; and

5. Name and signature of person receiving the payment.

§ 5.8. Records.

The following records shall be maintained by the employment agency for a period of two years:

1. All initial and position acceptance contracts;

2. All receipts as required by § 54.1-1304 F of the Code of Virginia and [§ 4-4 § 5.7] of this regulation;

3. The name and address of every client from whom a fee is received or to whom a fee is charged;

4. The amount of the fee actually received or charged;

5. The amount and date of any refunds made;

6. The name and address of the employer of each client;

7. The rate of compensation of every client;

8. All requests for client referrals by employers, each of which shall reflect the date of the request, the name and address of the employer, the rate of compensation, and the position description; and

9. Copies of all job advertisements identified by date and publication.

PART VI. STANDARDS OF CONDUCT.

§ 6.1. Grounds for disciplinary action.

The department has the power to fine any licensee or registrant, and to suspend [~~or~~] revoke [or fail to renew] any license or registration issued under the provisions of Chapter 13 of Title 54.1 of the Code of Virginia and the regulations of the department, where the licensee or registrant has been found to have violated or cooperated with others in violating any provision of Chapter 13 of Title 54.1 of the Code of Virginia or any regulation of the department.

§ 6.2. Advertising.

A. All advertising shall include the name and [address telephone number] of the employment agency placing the advertisement.

B. All advertising shall be truthful and contain no false or misleading statements with respect to the type of employment or salary available.

C. No employment agency shall advertise its services as free if the client is to assume any liability or contingent liability for any fees.

[D. No salary shall appear in an advertisement except the one appearing in the actual job order. When the top salary range is quoted, it shall be preceded by the word

"to."

E. The word "open" or the symbols "\$\$\$" or words and symbols of similar import may not be used as a substitute for the salary of any position or positions in an advertisement.

F. In group advertisements containing both "employer pays fee" and "applicant pays fee" listings, if the source of the fee is indicated for one job, it shall be indicated for all jobs.]

§ 6.3. Inspection of records.

All licensees shall produce during regular business hours to the department or any of its agents for inspection and copying any records required to be kept by the Code of Virginia or this regulation.

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

REGISTRATION OF EMPLOYMENT AGENCIES
EMPLOYMENT AGENCY BUSINESS LICENSE APPLICATION

Post Office Box
Richmond, Virginia 23230

\$150.00 Initial License Fee

Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please print or type when completing this form:

Business Name: _____

Trading As Name: _____

Business Street Address: _____ P. O. Box (if applicable): _____

City: _____ State: _____ Zip: _____

Business Telephone No. () _____

Please check one only of the following:

Business Type: Sole Proprietorship Partnership Corporation Association

Please answer the following questions with a Y= Yes or N= No in the appropriate box:

- 1) Has your firm been licensed in any other state? If yes, attach an explanation providing full details, including license certificate number.
- 2) Has your firm ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.
- 3) Has your application for a business license ever been revoked, rejected, or suspended for fraud or misrepresentation in this state? If yes, attach a full explanation.
- 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia Law.

Signature

NOTORIZATION

In the State of _____, City/County of _____, I, _____, a Notary Public in and for said City/County and state aforesaid, DO HEREBY certify that _____ personally appeared before me this day in person, is personally known to me to be the same person whose signature (or mark) is affixed to the foregoing instrument and has acknowledged that he signed said instrument as a free and voluntary act for the uses and purposes therein set forth.

Notary Public

Given under my hand this _____ day of _____ of _____

My commission expires _____

Affix Official Seal Here

BOND NO. _____

REGISTRATION OF EMPLOYMENT AGENCIES

WHEREAS, _____, located at _____, ("Principal"), and _____, ("Surety") a corporation of the State of _____, lawfully doing business in the Commonwealth of Virginia ("the Commonwealth"),

are held and firmly bound unto the Commonwealth in the full sum of Five Thousand Dollars (\$5,000.00), for the payment of which sum, said Principal and Surety bind themselves jointly and severally according to the conditions set forth below.

WHEREAS, the above Principal(s) has requested a license from the Commonwealth for the purpose of engaging in the business of an employment agency.

NOW, THEREFORE, if the Principal shall, during the period that this license is in effect, faithfully observe and honestly comply with the provisions of Virginia Code Section 54.1-300 through 54.1-308, and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit of that Principal, its agents or employees, then this obligation shall become void. Otherwise, this obligation shall remain in full force and effect, subject to the following conditions:

1. The Surety shall have the right to cancel this bond at any time by a written notice which shall state when the cancellation is to take effect, and shall be hand delivered to, received by registered mail by, the Oblige at its offices at the Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230. Such notice shall also be delivered, by the same means, to the Principal, at the address given above, at least sixty (60) days prior to the date that the cancellation becomes effective. It is expressly agreed and understood that the Surety shall remain fully liable for any default hereunder occurring at any time between receipt of the notice by the Oblige and the date that the cancellation becomes effective.
2. This bond shall remain in full force and effect until canceled as provided above.
3. Any person aggrieved by any act of the Principal which constitutes a violation of the provisions of Virginia Code Sections 54.1-300 through 54.1308, may proceed against the Principal or Surety on this bond, or both, to recover damages not in excess of the penalty of this bond.

PROVIDED, FURTHER, that in no event shall the Surety be liable for more than the face sum of this bond.

SIGNED, this _____ day of _____

Witness: _____ (Principal)

_____ BY _____ (SEAL)

_____ (Principal) _____ (SEAL)

BY _____ (SEAL)

_____ BY _____ (SEAL)

(Registered Virginia Agent)

ACKNOWLEDGEMENT OF PRINCIPAL

State of Virginia:

_____ of _____, to wit: I, _____, a Notary Public in and for the _____ aforesaid, in the State of Virginia, do certify that _____ aforesaid, and acknowledged the same.

Given under my hand this _____ day of _____, My commission expires _____

(Notary Public)

Affix Official Seal Here

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

EMPLOYMENT AGENCY CONTROLLING PERSON APPLICATION

Post Office Box 11066
Richmond, Virginia 23230

\$25.00 Initial License Fee

Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please print or type when completing this form:

First Name Middle Name (if none, leave blank) Last Name Generation (i.e.: III, Jr.)

Business Firm Name: _____
Street Address: _____ P. O. Box (if applicable): _____
City: _____ State: _____ Zip: _____
Province: _____ Country: _____ Postal Code: _____
Residence Telephone No. () _____

Please check one only of the following:

Acting as Controlling Person on June 30, 1992 Not a Controlling Person as of June 30, 1992

If you were acting as a Controlling Person as of June 30, 1992, please submit notification to the department no later than December 31, 1992.

Please answer the following questions with a Y= Yes or N= No in the appropriate box:

- 1) Have you ever been licensed in any other state as an owner or manager of an Employment Agency? If yes, attach an explanation providing full details, including license certificate number.
- 2) Have you ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.
- 3) Has your application for a license as an owner or manager of a business ever been revoked, rejected, or suspended for fraud or misrepresentation in this state, or any other state? If yes, attach a full explanation.
- 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia Law.

Signature

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

EMPLOYMENT AGENCY COUNSELOR APPLICATION

Post Office Box 11066
Richmond, Virginia 23230

\$45.00 Initial License Fee

Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please print or type when completing this form:

First Name Middle Name (if none, leave blank) Last Name Generation (i.e.: III, Jr.)

Business Firm Name: _____
Street Address: _____ P. O. Box (if applicable): _____
City: _____ State: _____ Zip: _____
Province: _____ Country: _____ Postal Code: _____
Residence Telephone No. () _____ Date of Birth: _____ Place of Birth: _____

Please check one only of the following:

Acting as an Employment Counselor on June 30, 1992 Not an Employment Counselor as of June 30, 1992

If you were acting as an Employment Counselor as of June 30, 1992, please submit notification to the department no later than December 31, 1992.

Please answer the following questions with a Y= Yes or N= No in the appropriate box:

- 1) Have you ever been licensed in any other state as a counselor of an Employment Agency? If yes, attach an explanation providing full details, including license certificate number.
- 2) Have you ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.
- 3) Has your application for a license as a counselor of a business ever been revoked, rejected, or suspended for fraud or misrepresentation in this state, or any other state? If yes, attach a full explanation.
- 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia Law.

Signature

Final Regulations

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Title of Regulations: VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.

Statutory Authority: § 40.1-118 of the Code of Virginia.

Effective Date: December 1, 1992.

Summary:

The adopted amendments to this regulation will allow the Virginia Apprenticeship Council to deregister an apprenticeship program which is not conducted, operated and administered in accordance with the regulations governing apprenticeship.

Council will notify the sponsor in writing of deregistration for one year after receiving substantial evidence in the record of either (i) exposing an apprentice to imminent danger in violation of state occupational safety and health standards; (ii) failure to provide supervision that is adequate for the period of training and the type of work being performed, sufficient to achieve the level of skill training of the craft, and sufficient to reasonably protect the apprentice from serious occupational injury or illness; or (iii) failure to train apprentices in accordance with approved apprenticeship program standards and knowingly or fraudulently certifying completion of training.

Instead of deregistration, council may impose a remedial action plan on apprenticeship sponsors/employers. Council may delay the deregistration for six months to afford presently registered apprentices the opportunity to complete their training. No additional apprentices will be registered during this period.

Council may also award credit to apprentices in deregistered programs sufficient to complete their apprenticeship program. In cases where apprentices choose to change employers because deregistration will prevent them from completing their apprenticeship, the council, through the Department of Labor and Industry, will use all appropriate means to assist them in securing employment with a registered apprenticeship sponsor.

VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.

§ 1. Purpose of regulation.

This regulation establishes procedures and standards for the approval and registration of apprenticeship programs and agreements in accordance with Chapter 6, Title 40.1

of the Code of Virginia. This regulation is intended to insure that apprenticeship training programs developed and registered with the Virginia Apprenticeship Council are of the highest possible quality in all aspects of on-the-job training and related instruction and that all apprenticeship programs provide meaningful employment and relevant training for all apprentices.

§ 2. Definitions.

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

“Apprentice” means a person as defined by § 40.1-120 of the Code of Virginia.

“Apprenticeable occupation” means an occupation as defined by § 40.1-120 of the Code of Virginia.

“Apprenticeship agreement” means a written agreement between an apprentice and a program sponsor, which agreement shall meet the criteria outlined in § 5 of these regulations.

“Apprenticeship Council” or “council” means the Virginia Apprenticeship Council established pursuant to § 40.1-117 of the Code of Virginia.

“Apprenticeship program” means a written plan conducted or sponsored by an employer, an association of employers, a joint apprenticeship committee or an organization of employees, which contains all terms and conditions as outlined in this regulation.

“Commissioner” means the Commissioner of the Virginia Department of Labor and Industry.

“Sponsor” means an employer, an association of employers, a joint apprenticeship committee or an organization of employees that has an approved apprenticeship program registered with the council.

“Supervisor of apprentices” means the person designated by the sponsor to perform the duties outlined in the standards of apprenticeship.

§ 3. Eligibility for registration of programs and agreements.

A. Proposed apprenticeship programs conforming to § 4 of these regulations may be submitted to the council for approval and registration by any of the following potential program sponsors:

1. A Joint Apprenticeship Committee (Commonwealth, area or in-plant).
2. An individual employer having no bargaining agreement with those of his employees engaged in the trade to which the standards apply.

3. An association of employers whose members participating under the standards have no bargaining agreement with their employees.

4. An individual employer or an association of employers where there is a collective bargaining agreement or other instrument that provides for union participation in any manner in the proposed program, and such participation is exercised. The sponsor shall obtain from the collective bargaining agent written acknowledgement of the union agreement or a statement of no objection to the registration of the proposed program.

(NOTE: Where no such participation is evidenced and practiced, the employer or association of employers shall simultaneously furnish to the union, which is the collective bargaining agent of the employees to be trained, a copy of the apprenticeship program. The council will allow 60 days for receipt of union comments, if any, before final action is taken on the application for approval and registration.)

5. An organization of employees when the employer or employer association waives participation in the standards.

6. Apprenticeship programs and standards [~~to~~ of] employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered, pursuant to all requirements of Title 29, Part 29 of the Code of Federal Regulations, by any recognized State Apprenticeship Agency/Council or the Bureau of Apprenticeship and Training, U.S. Department of Labor, shall be accorded registration upon request by the sponsoring entity.

B. Apprentices shall be individually registered under a registered program. Such registration may be effected:

1. By program sponsors filing copies of each apprenticeship agreement; or

2. By program sponsors filing a master copy of such agreement followed by a listing of the name and other required data of each individual when apprenticed.

C. The council may refuse to accept a program proposed for registration if, in its judgment, the program, the sponsor or any participants are unable to conduct the program in accordance with this regulation.

D. Approved apprenticeship programs shall be accorded registration, evidenced by written notification of registration.

§ 4. Standards for apprenticeship programs.

An apprenticeship program to be eligible for registration with the Virginia Apprenticeship Council shall conform to

the following standards:

A. The program is an organized written plan embodying the terms and conditions of employment, training and supervision of one or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

B. The program standards contain the equal opportunity pledge and, when applicable, conform with all other requirements in accordance with the Virginia State Plan for Equal Employment Opportunity in Apprenticeship and provisions concerning the following:

1. The employment and training of the apprentice in an apprenticeable occupation.

2. A statement that on or after the date the standards of apprenticeship are duly executed, it shall be the policy of the sponsor that all apprentices employed in the occupation covered herein shall be governed by the terms and conditions of the standards of apprenticeship, a copy of which will be provided for the sponsor who will make it available to the apprentice for review, upon request.

3. The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age of not less than 16 years.

4. A provision for the granting of advanced standing or credit on the term of apprenticeship for previously acquired experience, training or skills for all applicants equally, with commensurate wages for any progression step so granted. Credit will be granted only after the record of the apprentice has been reviewed by the sponsor's supervisor of apprentices.

5. The placement of an apprentice under a written apprenticeship agreement, which agreement shall conform to the standards for apprenticeship agreements as stated in § 5 of this regulation.

6. A term of apprenticeship [of] not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice and a statement that overtime hours worked by the apprentice will or will not be credited to the term of apprenticeship.

7. Provisions for an initial probationary period of not less than 500 clock hours and no more than 2,000 clock hours of employment and training, during which time termination of the apprenticeship agreement may be effected by the council upon written notification from either party. Full credit will be given for the initial probationary period toward completion of the apprenticeship program.

8. The designation of the supervisor of apprentices

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whose duties shall include.

- a. Maintaining adequate records of the progress of each apprentice;
 - b. Assurance of qualified training personnel and adequate supervision on the job;
 - c. Making reports as required at specified intervals regarding the aptitude, skill and progress of each apprentice;
 - d. Assurance the apprentice is given instruction in safe working methods in each operation as it is encountered throughout the term of apprenticeship;
 - e. Making arrangements with the local vocational education authorities for the required related instruction;
 - f. Such other duties as may be necessary in developing and maintaining an effective apprenticeship program.
9. An outline of the work processes in which the apprentice will receive supervised work experience on the job and the allocation of the approximate time to be spent in each major process.
10. Provision for organized, related and supplemental instruction in technical subjects related to the trade. Such instruction may be given in a classroom through trade industrial courses or correspondence courses of equivalent value, or other forms of self-study. All related and supplemental instruction will be approved by the director of vocational education. A minimum of 144 hours is recommended for each year of apprenticeship.
11. Provision for a periodic evaluation of each apprentice's progress in job performance and related instruction prior to the expiration of each wage period. Should such a review reveal a lack of interest or ability on the part of the apprentice, the apprentice will be informed of the deficiency and may be placed on probation for a sufficient period of time to determine improvement or failure. At the end of the probationary period, if the apprentice has not shown acceptable improvement, the apprentice agreement may be suspended or revoked. The sponsor will provide written notice of the final action taken to the apprentice and the Virginia Apprenticeship Council.
12. A statement that hours of work for apprentices shall be the same as for other employees in the trade and whether time spent at related instruction will or will not be considered as hours of work.
13. A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and established in accordance with federal and state

wage laws.

14. Effective January 8, 1988, the minimum numeric ratio of apprentices to journeymen shall be 1:2. Effective June 1, 1989, the minimum numeric ratio of apprentices to journeymen shall be 1:1; these provisions are nonseverable. Individual program sponsors shall propose, as part of their apprenticeship standards, a ratio of apprentices to journeymen consistent with proper supervision, training, safety and continuity of employment, applicable provisions in collective bargaining agreements, and applicable requirements of recognized licensing boards or authorities.

The Department of Labor and Industry, Division of Apprenticeship Training, will review and approve all ratio proposals based on the explanation and justification provided by each program sponsor. Consideration will be given, but not limited to, the following factors:

- a. Evidence of ability to assure proper supervision, training, safety, and continuity of employment under the proposed ratio;
- b. The specific nature of the industry and occupation involved;
- c. Proposed hiring or upgrading of minorities, females, older workers, dislocated workers, exoffenders, the handicapped, and veterans;
- d. Evidence of ability to train under the proposed ratio.

If a ratio proposal is disapproved by the division, the sponsor may appeal, in writing, the decision to the commissioner. If the commissioner upholds the decision of the Apprenticeship Training Division, the sponsor may appeal to the State Apprenticeship Council. The decision of the council shall be final.

Program sponsors presently operating under emergency ratios may continue to do so until their emergency ratios expire. During the period January 8, 1988 to June 1, 1989, the director of the Apprenticeship Training Division may approve interim emergency ratio requests. The factors enumerated above for approval of all ratio proposals as well as the appeals process governing apprenticeship standards ratio requests shall apply to interim emergency ratio requests.

The effectiveness of the numeric ratio approved for individual program sponsors will be examined every two years during the program sponsor evaluation process.

15. A procedure for lay-off suspension [,] cancellation and reinstatement of apprentices. Apprentices may be

laid off in the commensurate ratio of apprentices to journeymen. Provided, however, any apprentice laid off shall be offered reinstatement in the seniority standing before any new apprentices shall be registered. Where there is a collective bargaining agreement providing for lay-off procedures for apprentices, it shall prevail over the above stated procedures. The council will be notified in writing of all lay-offs, suspensions, cancellations and reinstatements. The notice will state the reason for the specific action.

16. A statement that if and when the sponsor is no longer able to fulfill his obligations for the training of an apprentice, the apprentice may be transferred or registered with credit for previous training to another sponsor.

17. A statement that the sponsor will notify the council of persons who have successfully completed the apprenticeship program and request the council to prepare a Certificate of Completion for issuance to each person.

18. A statement that the sponsor shall instruct the apprentice in safe and healthful work practices and shall insure that the apprentice is trained in facilities and other environments that meet the Virginia Occupational Safety and Health Standards for General Industry and the Construction Industry, developed pursuant to the Federal Occupational Safety and Health Act.

19. A statement that in the event a difference of opinion should arise as to any provision of the apprenticeship agreement, either party to the apprenticeship agreement may consult with the council for clarification of the matter in question.

20. The sponsor's assurance that any modification or amendment of the apprenticeship program will be promptly submitted to the council. Any such modification shall be approved by the council and such modification shall not alter or affect apprenticeship agreements in effect without the consent of all parties affected.

21. A statement that the sponsor may have the program cancelled by submitting a written request to the council.

22. A statement that the apprenticeship program may be cancelled by the council if the program is not conducted in accordance with these regulations.

23. A statement identifying the Virginia Apprenticeship Council as the registration agency which agency is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor.

24. A statement identifying the apprentice's

responsibilities as an employee.

§ 5. Standards for apprenticeship agreements.

The apprenticeship agreement shall contain explicitly or by reference:

1. Names and signatures of the contracting parties (apprentice and sponsor) and the signature of a parent or guardian if the apprentice is a minor.

2. The date of birth, sex, race, social security number and veteran status of the apprentice.

3. Name and address of the sponsor, apprentice and the Virginia Apprenticeship Council.

4. The trade or craft in which the apprentice is to be trained, and the beginning date and duration of the apprenticeship.

5. The number of hours to be spent by the apprentice in work on the job and the number of hours to be spent in related or supplemental instruction.

6. A schedule of the work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

7. A graduated scale of wages to be paid the apprentice contingent upon satisfactory performance and whether or not the apprentice will be paid for attendance at related or supplemental instruction.

8. Statements providing:

a. For a specific initial probationary period conforming to ~~subsection~~ *subdivision B*; ~~paragraph~~ 7 of § 4 of these regulations;

b. That after the initial probationary period, the apprenticeship agreement and as it may be amended or modified during the period of the agreement.

9. A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended or modified during the period of the agreement.

10. A statement that the employment and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, sex or physical handicap which is unrelated to the person's qualification and ability to perform the job.

11. The educational level of the apprentice.

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12. Credit for previous experience granted the apprentice.

13. A provision that a sponsor who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the council, transfer such contract to any other sponsor, provided the apprentice consents and such other sponsor agrees to assume the obligations of the apprentice agreement.

§ 6. Deregistration procedure.

Deregistration of a program may be effected upon the voluntary action of the sponsor by a written request for cancellation of the registration or by the council instituting formal deregistration proceedings in accordance with the provisions of this section.

A. Voluntary deregistration.

The council may cancel the registration of an apprenticeship program by a written acknowledgement of a request stating, but not limited to, the following matters:

1. The registration is cancelled at the sponsor's request, and the effective date thereof.

2. That within 15 days of the date of the acknowledgement, the sponsor shall:

a. Notify all apprentices of such cancellation and the effective date;

b. Inform each apprentice that such cancellation automatically deprives the apprentice of individual registration; and

c. That the cancellation of the program removes the apprentice from coverage for federal and state purposes which require approval of an apprenticeship program.

B. Involuntary deregistration.

Deregistration proceedings may be undertaken by the council when an apprenticeship program is not conducted, operated and administered in accordance with these regulations, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

1. Where it appears a program is not being operated in accordance with these regulations, the council will notify the sponsor in writing:

2. The notice shall:

a. Be sent by registered or certified mail, with return receipt requested;

b. State the violation(s) and the remedial action required; and

c. State that deregistration proceedings will be initiated unless corrective action is effected within 30 days of the receipt of the notice.

3. Upon request by the sponsor and for good cause, the 30-day term may be extended for another 30 days. During the period of correction, the sponsor shall be assisted by the council in every reasonable way to achieve conformity.

4. If the council determines that the required correction is not effected within the allotted time, a notice will be sent to the sponsor, by certified or registered mail, return receipt requested, stating the following:

a. The notice is sent pursuant to this subsection;

b. Certain deficiencies or violations (stating them) were called to the sponsor's attention and remedial measures requested, with dates of such occasions and letters, and that the sponsor has failed to effect correction;

c. Based upon the stated deficiencies and failure of remedy, the program will be deregistered, unless within 15 days of the receipt of this notice, the sponsor requests a hearing before the council;

d. If a request for a hearing is not made, the program will be deregistered.

1. Council will notify the sponsor in writing of deregistration for one year after receiving [substantial] evidence [in the record] of either:

a. Exposing [apprentices an apprentice] to imminent danger in violation of state occupational safety and health standards;

b. Failure to provide [adequate supervision of apprentices on the job; supervision that is adequate for the period of training and the type of work being performed, sufficient to achieve the level of skill training of the craft, and sufficient to reasonably protect the apprentice from serious occupational injury or illness;] or

c. Failure to train [apprentices an apprentice] in [all aspects of the trade accordance with approved apprenticeship program standards] and knowingly or fraudulently certifying completion of training.

[In lieu of deregistration, council may impose on the program sponsor a remedial action plan designed to bring the program sponsor into compliance with these regulations.

In cases where an employer or or employers who are signatory to a joint or nonjoint apprenticeship agreement act in such a manner that the program is not conducted, operated, or administered in accordance with these regulations, council may impose on the joint or nonjoint apprenticeship program a remedial action plan designed to bring the individual member employer(s) into compliance with these regulations.

Prior to any vote by council to deregister an apprenticeship program, or to impose a formal remedial action plan, the program sponsor shall be:

a. Notified by registered mail that council intends to take such action, with the alleged infraction(s) indicated; and

b. Afforded the opportunity to present information to council which bears on the decision to deregister or impose a remedial action plan, either in writing or by personal appearance within 30 days of receipt of notification by council.

The program sponsor shall be informed in writing of council's decision regarding deregistration or remedial action.]

2. Implementation of involuntary deregistration. Council may delay the deregistration for six months to afford presently registered apprentices the opportunity to complete their training. No additional apprentices will be registered during this period.

Council may also award credit to apprentices in deregistered programs sufficient to complete their apprenticeship program.

In cases where apprentices choose to change employers, because deregistration will prevent them from completing their apprenticeship, the council, through the Department of Labor and Industry, will use all appropriate means to assist them in securing employment with a registered apprenticeship sponsor.

§ 7. Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to these regulations may be reinstated upon presentation of adequate evidence that the program is operating in accordance with these regulations. Such evidence shall be presented to the council.

§ 8. Hearings.

All hearings will be held in accordance with the provisions of the Administrative Process Act, Chapter 1.1:1, § 9-6.14:11 of Title 9, of the Code of Virginia.

§ 9. Limitations.

Nothing in these regulations or in any apprenticeship agreement shall operate to invalidate:

1. Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

2. Any special provisions for veterans, minority persons or females in the standard apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by state or federal law, executive order or other regulation adopted pursuant thereto.

§ 10. Complaints.

A. This section is not applicable to any complaint concerning discrimination or equal opportunity matters; all such complaints will be processed in accordance with the provisions in the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

B. Except for matters described in subsection A of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice or his authorized representative within 60 days after the local decision to the council for review. Matters covered by a collective bargaining agreement are not subject to review.

C. The complaint shall be in writing and signed by the complainant or his authorized representative. It shall state the specific matter(s) complained of, together with all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

D. The council shall render an opinion within 90 days after receipt of the complaint. During such 90 day period, the council shall make reasonable efforts to effect a satisfactory resolution between the parties involved.

E. If so resolved, the parties shall be notified that the case is closed. Where an opinion is rendered, copies of same shall be sent to all interested parties.

§ 11. Program sponsor evaluation procedure.

Program sponsors will be evaluated once every two years to determine adequate compliance with the goal of training apprentices under proper supervision, in a safe environment, in such a manner as to acquire the skills of the trade, with fair compensation based on individual progress consistent with average like compensation of similar industries in the area. Such evaluations will be conducted by the Apprenticeship Division staff pursuant to procedures and criteria established by the Virginia Apprenticeship Council. The council may cancel apprenticeship programs where preexisting criteria are not

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met.

[PROGRAM SPONSOR EVALUATION PROCEDURE

A. Statement of Purpose:

Program sponsors will be evaluated once every two years to determine adequate compliance with the goal of training apprentices under proper supervision, in a safe environment, in such a manner as to acquire the skills of the trade, with fair compensation based on individual progress consistent with average like compensation of similar industries in the area. Such evaluations will be conducted by the Apprenticeship Division staff pursuant to the below procedures and criteria established by the Virginia Apprenticeship Council. The council may cancel apprenticeship programs where preexisting criteria are not met.

B. General Program Information:

Sponsor Name:

Address:

Apprenticeship Supervisor:

Craft(s)/Trade(s):

Number of Apprentices:

Training Ratio Requested:

Is there a collective bargaining agreement in place?

DLI Apprenticeship Representative:

C. Compliance with Standards of Apprenticeship:

1. Date of adoption:

2. Has the program sponsor adhered to the Equal Opportunity Pledge, and when applicable, conformed to the Virginia State Plan for Equal Employment Opportunity in Apprenticeship?

3. Does the program sponsor award proper credit for previous experience?

4. Have apprenticeship agreements been properly executed? What recurring problems were found, if any?

5. Are the terms of the apprenticeship, in practice, in accordance with the Virginia Voluntary Apprenticeship Act?

6. Have the apprentices been:

b. proper in conduct?

e. working diligently toward learning the craft?

7. Has the Supervisor of Apprentices:

a. kept adequate records of the progress of each apprentice?

b. monitored the apprentice's experience in the work processes outlined in the Training Program?

c. submitted/received the periodic reports concerning the aptitude, skill, and progress of each apprentice?

d. ensured that the apprentice is given instruction in safe and healthful working methods in each operation as it is encountered throughout the term of apprenticeship? How many and what type of accidents have occurred since instruction was given?

e. made arrangements with the Local Vocational Education authorities for the required related instruction?

8. Has a schedule of work processes necessary to develop a skilled journeyperson in the trade been updated as necessary and adhered to?

9. Have the apprentices enrolled and received the required amount of related instruction? If so, have they submitted or the school provided, to their supervisor, evidence of satisfactory participation and progress in the required related instruction?

10. Has the apprentice supervisor conducted periodic evaluations of each apprentice's job performance and related instruction?

11. Are the regular hours of work the same for apprentices as for other employees in the craft or trade?

12. Are the apprentice wages progressively increased as the apprentice progresses in skill and productivity?

13. Are apprentices that are laid off entitled to seniority privileges and reinstated in the seniority standing before any new apprentices are registered?

14. Have certificates of completion of apprenticeship been requested by the program sponsor in a timely fashion?

15. Have any provisions of the standards of apprenticeship been submitted to the Apprenticeship Council for interpretation? If so, explain:

16. How many apprentices been transferred or reregistered with credit for previous training to a different program sponsor?

17. Has the sponsor complied with the qualifications set for apprenticeship?

18. Has the sponsor complied with the initial probationary period?

19. What ratio of apprentices to journeymen did the program sponsor request? What ratio did the program operate under?

20. Has the program sponsor promptly notified the Apprenticeship Council of modifications to their apprenticeship programs?

D. Qualitative Measures:

1. Complaint Resolution:

Have any complaints been lodged against the program sponsor? If so,

a. How many?

b. What was the nature of these complaints?

c. How were they resolved?

2. Program Results (During the past two years):

a. How many apprentices were enrolled in the program?

b. How many apprentices completed the sponsor's program in the past two years?

c. How many of the sponsor's apprenticeship graduates are still employed by the program sponsor?

d. How many apprentices voluntarily terminated the program?

e. How many apprentices were dismissed due to:

(a) failure to attend related instruction?

(b) poor job performance?

(c) other (specify?)

f. Is there a pattern to the dismissals? If so, explain.

3. Apprentice Interviews (Randomly Selected/Sliding Scale):

Do interviews with randomly selected apprentices indicate general satisfaction or dissatisfaction with the training program?

Cite the specific areas of satisfaction and dissatisfaction and how many apprentices so indicated.

i. Summary of Interviews:

E. Apprenticeship Representative's Comments Summarized:

F. Recommendations:

G. Commendations:

H. Sponsor's Comments:]

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

REGISTRAR'S NOTICE: Due to the length, the Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities filed by the Commonwealth Transportation Board are not being published in full text. However, those portions of the regulation being amended are set out below. In accordance with § 9-6.14:22 of the Code of Virginia a summary in lieu of full text is being published. The full text of the regulation is available for inspection at the offices of the Registrar of Regulations and the Department of Transportation.

Title of Regulation: VR 385-01-5. Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.

Statutory Authority: §§ 33.1-12 and 33.1-49 of the Code of Virginia.

Effective Date: November 18, 1992.

Summary:

The Virginia Department of Transportation, in conjunction with Virginia Polytechnic Institute and State University, has developed a handbook entitled "Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities."

The purpose of this manual is to provide the current rules and regulations, including operating requirements, for the transport of hazardous materials through Virginia's Bridge-Tunnel facilities. The manual and its contents are consistent with the Commonwealth of Virginia's regulations and in conformance with Department of Transportation regulations as identified in the Code of Federal Regulations (Title 49).

Further, the manual provides interested parties with detailed and specific information concerning the regulations established by the Virginia Department of Transportation and the Chesapeake Bay Bridge-Tunnel District governing the transportation of hazardous materials, as well as a useful table (alphabetized) of hazardous materials transported through the Commonwealth, and the restrictions governing their transport.

The amendments to the manual:

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1. Change the regulations to allow vehicles which use natural gas (or gases with similar properties) as fuel to use the tunnel facilities in the Commonwealth; and

2. Change the regulations pertaining to the conditions under which low-pressure liquid oxygen can be transported through tunnel facilities in the Commonwealth.

The amendments appear in Appendix 2, "Compressed Gases," and in the "Hazardous Materials Table."

VR 385-01-5. Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.

2. Compressed gases.

(a.1) No vehicle shall enter the facilities if its load includes a compressed gas which is listed in section 14 and referenced to this subsection, unless such compressed gas is in a tube or cylinder of two inches or less in outside diameter and four fluid ounces or less in capacity. 2) Empty containers which last contained such a compressed gas are not allowed passage when the quantity and/or container size limitations exceed those described above. 3) No empty tank vehicle is allowed passage if it is used in the transportation of any compressed gas referenced to this subsection.

(b.1) Compressed gases listed in section 14 and referenced to this subsection are restricted to a maximum quantity per vehicle of 100 pounds gross weight providing the gross weight of each tube or cylinder is 10 pounds or less, and except that cyclopropane or ethylene for hospital use is restricted to a maximum quantity per vehicle of 20 tubes or cylinders measuring 20 inches or less in length, and 4 1/2 inches or less in outside diameter. Acetylene, liquefied petroleum gas (LPG), compressed natural gas (CNG), or other gases having similar chemical properties will be allowed passage providing that the load per vehicle is limited to one cylinder not exceeding 323 cubic feet in capacity, 42 inches long, 12 and 7/8 inches in outside diameter; and 244 pounds gross weight (60 pound cylinder) ; but the tank . Low pressure liquid oxygen (under 40 PSIG) is allowed passage providing that the load per vehicle is limited to [~~one cylinder~~ two cylinders] not exceeding 70 gallons in [total] liquid capacity . The container valve must be enclosed by a protective metal safety cap properly and securely fitted in place. The inspection by authorized facility personnel reveals that LP gas containers are properly valved-off, securely attached, and determined to be safe for travel. The valves must remain closed until vehicle has cleared the facility. Empty containers which last contained a compressed gas referenced to this subsection are not allowed passage when the quantity and/or size limitations exceed those

described above. No empty tank vehicle used to transport any compressed gas referenced to this subsection is allowed passage.

(b.2) Housetrailers, camper trailers, self-propelled campers, mobile homes, recreational vehicles, and other vehicles equipped with LP-gas installations for cooking, heating or refrigeration are permitted to travel across the facility provided: (i) That LP-Gas containers do not exceed two tanks containing not more than 105 pounds water capacity (approximately 45 pounds LPG capacity) each or one cylinder not exceeding 60 pounds LPG capacity. (ii) That containers are constructed, installed, and maintained in accordance with the regulations and specifications of the Department of Transportation and National Fire Protection Association. (iii) That the inspection by authorized facility personnel, reveals LP-Gas containers are properly valved-off, securely attached, and determined to be safe for travel. (iv) The valves must remain closed until vehicle has cleared the facility.

Empty containers which last contained a compressed gas referenced to this subsection are not allowed passage when the quantity and/or size limitations exceed those described above.

(b.3) Passenger vehicles equipped to use LP-Gas [~~only~~] liquefied petroleum gas (LPG) or compressed natural gas (CNG) as a [~~single~~] motor fuel will be permitted passage, provided that the LP-Gas LPG or CNG containers are manufactured, installed, and maintained in keeping with the rules, regulations and specifications of the Department of Transportation and , the National Fire Protection Association , and the American Gas Association and further provided that such containers do not exceed 200 gallons water capacity.

Trucks or commercial vehicles equipped to use LP-Gas [~~only~~] LPG or CNG as [~~single~~] motor fuel will be permitted passage, provided that the LP Gas LPG or CNG containers are manufactured, installed, and maintained in keeping with the rules, regulations and specifications of the Department of Transportation and , the National Fire Protection Association, and the American Gas Association and further provided that such containers do not exceed 300 gallons water capacity. Empty containers which last contained a compressed gas referenced to this subsection are not allowed passage when the quantity and/or size limitations exceed those described above.

* * * * *

(h) Notes in column 7 specifies the regulatory notes and subsections that describes the applicable restrictions and limitations corresponding each hazard class for each hazardous material. For Acetic anhydride the regulatory

note is 3.(f), which is described on page 42 29 .

VIRGINIA DEPARTMENT OF TRANSPORTATION AND
THE CHESAPEAKE BAY BRIDGE - TUNNEL DISTRICT

HAZARDOUS MATERIALS TRANSPORTATION RULES AND REGULATIONS AT
BRIDGE - TUNNEL FACILITIES IN THE COMMONWEALTH OF VIRGINIA

COMMODITY	CLASS	ID	ER	MAX. GW/V	MAX. W/PACK	NOTES
Mercurous sulfate, solid	Poi. B	1620 53	NR	25		8.(j)
Mercury acetylide	FORBID.			P	P	
Mercury based pesticide, liquid, n.o.s. (compounds and preparations)	Fl. L.	2778 28	4000	1q		4.(g),(j),(k)
Mercury based pesticide, liquid, n.o.s. (compounds and preparations)	Poi. B	2777 55	1000	-		8.(g)
Mercury based pesticide, solid, n.o.s. (compounds and preparations)	Poi. B	2777 55	1000	-		8.(g)
Mercury compound, n.o.s.	Poi. B	2025 53	NR	25		8.(j)
Mercury fulminate. See Initiating explosive.			-	-		
Mercury iodide, aquabasic, ammonobasic (Iodide of Million's base)	FORBID.			P	P	
Mercury metallic	ORM-B	*2809 60	NR	DOT		9.(a)
Mercury nitride	FORBID.			P	P	
Mercury oxycyanide	FORBID.			P	P	
Mesityl oxide	Fl. L.	1229 26	4000	1q		4.(g),(j),(k)
Metal alkyl, solution, n.o.s.	Fl. L.	*9195 40	4000	1q.		4.(g),(j),(k)
Metal borings, shavings, turnings or cuttings (ferrous metals only, except stainless steel)	ORM-C	2793 32	NR	DOT		9.(a)
Metal salts of methyl nitramine (dry)	FORBID.			P	P	
Methane or Methane Compressed	Fl. G.	1971 17	100 =	10 =		2.(b.1)
Methane refrigerated liquid (cryogenic [liquid]))	Fl. G.	1972 22	100	10		2.(b)
Methanol. See Methyl alcohol.			-	-		

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DEPARTMENT OF TRANSPORTATION AND
THE CHESAPEAKE BAY BRIDGE - TUNNEL DISTRICT

HAZARDOUS MATERIALS TRANSPORTATION RULES AND REGULATIONS AT
BRIDGE - TUNNEL FACILITIES IN THE COMMONWEALTH OF VIRGINIA

COMMODITY	CLASS	ID	ER	MAX. GW/Y	MAX. W/PACK	NOTES
Motor, internal combustion	ORM-C			NR	DOT	9.(a)
Motor vehicle, etc., including automobile, motorcycle, truck, tractor, and other self-propelled vehicle or equipment powered by internal combustion engine, when offered new or used for transportation and which contains fuel in the engine or fuel tank, or the electric storage battery is connected to either terminal of the electrical system	ORM-C			NR	DOT	9.(a)
Muriatic acid. See Hydrochloric acid.				-	-	
Naled (RQ-10)	ORM-E	*2783	55	20000	55 Gal.	9.(c)
Naptha	Com. L.	2553	27	NR	-	1.(a)
Naptha	Fl. L.	2553	27	4000	1q	4.(h), (j), (k)
Naptha distillate	Com. L.	1268	27	NR	-	1.(a)
Naptha distillate	Fl. L.	1268	27	4000	1q	4.(g), (j)
Naphthalene or Naphthalin (RQ-5000)	ORM-A	1334	32	NR	DOT	9.(a)
Naphthalene diozonide	FORBID.			P	P	
Naptha petroleum. See Petroleum naptha.				-	-	
Naptha, solvent	Com. L.	1256	27	NR	-	1.(a)
Naptha, solvent	Fl. L.	1256	27	4000	1q	4.(g), (j), (k)
Naphthenic acid (RQ-100)	ORM-E	*9137	31	20000	55 Gal.	9.(c)
Naphthyl amineperchlorate	FORBID.			P	P	
Natural gas, Compressed. See Methane compressed.				=	=	

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THE CHESAPEAKE BAY BRIDGE - TUNNEL DISTRICT
HAZARDOUS MATERIALS TRANSPORTATION RULES AND REGULATIONS AT
BRIDGE - TUNNEL FACILITIES IN THE COMMONWEALTH OF VIRGINIA

COMMODITY	CLASS	ID	ER	MAX.GW/V	MAX.W/PACK	NOTES
Natural gas, compressed, as vehicle fuel	Fl. G.	1971	17	-	-	2.(b),(3)
Natural gas, refrigerated liquid, with high methane content (cryogenic [liquid])	Fl. G.	1972	22	100	10	2.(b)
Natural gasoline. See gasoline.				-	-	
Neohexane	Fl. L.	1208	27	4000	1q	4.(g),(j)
Neon	Nfl. G.	1065	12	NR	-	2.(d)
Neon, refrigerated liquid (cryogenic [liquid])	Nfl. G.	1913	21	NR	-	2.(e)
New explosive or explosive device. See 173.51 and 173.85, CFR 49.				-	-	
Nickel ammonium sulfate (RQ-5000)	ORM-E	*9138	31	20000	55 Gal.	9.(c)
Nickel carbonyl	Fl. L.	1259	28	P	P	
Nickel catalyst, wet, finely divided, activated or spent, with not more than 40% water or other suitable liquid	Fl. S.	1378	32	NR		5.(h),11.
Nickel chloride (RQ-5000)	ORM-E	*9139	31	20000	55 Gal.	9.(c)
Nickel cyanide, solid	Pol. B	1653	53	2000	85	8.(k),11.
Nickel hydroxide (RQ-1000)	ORM-E	*9140	31	20000	55 Gal.	9.(c)
Nickel nitrate (RQ-5000)	Ox. M.	2725	35	2000	35	6.(d),11.
Nickel picrate	FORB.D.			P	P	
Nickel sulfate (RQ-5000)	ORM-E	*9141	31	20000	55 Gal.	9.(c)
Nicotine hydrochloride	Pol. B	1656	55	1000	1 Gal.	8.(c)
Nicotine, liquid	Pol. B	1654	55	NR	-	8.(h)
Nicotine, malicylate	Pol. B	1657	53	1000	1 Gal.	8.(c)

VIRGINIA DEPARTMENT OF TRANSPORTATION AND
THE CHESAPEAKE BAY BRIDGE - TUNNEL DISTRICT
HAZARDOUS MATERIALS TRANSPORTATION RULES AND REGULATIONS AT
BRIDGE - TUNNEL FACILITIES IN THE COMMONWEALTH OF VIRGINIA

COMMODITY	CLASS	ID	ER	MAX.GW/V	MAX.W/PACK	NOTES
Oxidizer, n.o.s., or Oxidizing material, n.o.s.	Ox. M.	1479	35	2000	35	6.(c),11.
Oxidizer, poisonous, liquid, n.o.s.	Ox. M.	*9199	44	100	35	6.(a),11.
Oxidizer, poisonous, solid, n.o.s.	Ox. M.	*9200	42	100	35	6.(a),11.
Oxygen or Oxygen compressed	Nfl. G.	1072	14	NR		2.(d)
Oxygen refrigerated liquid, (cryogenic [liquid])	Nfl. G.	1073	23	[See footnote]		2.(b),11
Paint drier, liquid	Com. L.	1168	26	NR	-	1.(a)
Paint drier, liquid	Fl. L.	1168	26	4000	1q	4.(h),(j),(k)
Paint, Enamel, Lacquer, Stain, Shellac, or Varnish Aluminum, Bronze, Gold, wood Filler, liquid or lacquer base, liquid	Com. L.	*1263	26	NR	-	1.(a)
Paint, Enamel, Lacquer, Stain, Shellac, or Varnish Aluminum, Bronze, Gold, Wood Filler, liquid or lacquer base, liquid	Fl. L.	*1263	26	4000	1q	4.(h),(j),(k)
Paint reducing or thinning compound. See Compound lacquer, paint or varnish, removing reducing or thinning, liquid.				-	-	
Paper caps. See Toy caps.				-	-	
Paper scrap (when dry, clean, and free from oil)	ORM-C			NR	DOT	9.(a)
Paper stock, wet	Fl. S.	1325	32	NR	-	5.(h),11.

~~Footnote: No vehicle shall enter the facility if its load includes oxygen, refrigerated liquid (cryogenic liquid) unless all restrictions as outlined in section 2. Compressed Gases are fully complied with. Empty containers which last contained oxygen, refrigerated liquid (cryogenic liquid) are not allowed passage. A tank vehicle used for the transportation of oxygen, refrigerated liquid (cryogenic liquid) is not allowed passage.~~

EMERGENCY REGULATIONS

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-15. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity.

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

Effective Dates: September 22, 1992 through September 21, 1993.

Preamble:

VR 680-14-15 establishes a General Permit Registration Statement for storm water discharges associated with industrial activity. Virginia is a delegated state with regards to the federal National Pollutant Discharge Elimination System (NPDES) permit program. The State Water Control Board (Board) administers the federal program under the State VPDES permit program. The State permit program is authorized under the State Water Control Law and the Permit Regulation (VR 680-14-01) sets forth the policies and procedures that are followed in the administration of the VPDES permit program.

On November 16, 1990, the Environmental Protection Agency (EPA) published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This rule established permit application requirements for storm water discharges associated with industrial activity. Three types of permit application options were identified in the regulations for industrial storm water dischargers:

- Group Application;
- Individual Permit Application; and
- Notice of Intent to be covered under a General Permit.

Group applications are handled entirely by EPA Headquarters in Washington, D.C. At the present time, the deadline has passed for any additional facilities to become part of a group. The federal deadline for submitting an individual application or a Notice of Intent to be covered under a general permit is October 1, 1992. The Board has not yet developed any storm water general permits, therefore the option of submitting a Notice of Intent does not exist. This reduces the number of application options for those not covered under a group application to just one, an individual application.

On May 20, 1991, the Regional Administrator of EPA Region III signed the modification to Virginia's NPDES permit program delegation which authorized the Board to issue General VPDES Permits. The State must

maintain a program as stringent as EPA. Since EPA did not promulgate their storm water general permits until early September 1992, the Board has had no basis from which to develop their storm water general permits. The Board intends to develop one or more general permits for storm water discharges. All proposed permits must be approved by the EPA and adopted through the State rulemaking procedure.

Since it is impossible that a storm water general permit will be promulgated by the Board by October 1, 1992, thus allowing the submittal of a Notice of Intent, the development of the General Permit Registration Statement is necessary. This will allow a discharger, eligible for coverage under a general permit, to submit this Regulation Statement as demonstration of the intention to be covered under a general permit.

Once the storm water general permit has been promulgated in accordance with the procedures in the Administrative Process Act, the Director will notify all dischargers that have filed the Registration Statement as to whether or not their statements have been accepted. A discharger whose statement has been accepted may opt to file an individual storm water permit application with the Board in lieu of being subject to the terms of the general permit. If the discharger elects to be permitted by the general permit then the Registration Statement will serve as the General Permit Notice of Intent. Within 30 days of notice that the statement has not been accepted, a discharger must file an individual storm water permit application with the Board.

Nature of the Emergency: The Board proposes to adopt a regulation to allow the filing of a VPDES General Permit Registration Statement for storm water discharges associated with industrial activity to satisfy the permit application requirements of the federal storm water permitting regulations (55 FR 47990).

The EPA storm water regulations define eleven categories of "industrial activity" that are required to file permit applications for storm water discharges associated with industrial activity. Their term "industrial activity" covers manufacturing facilities; hazardous waste treatment, storage, or disposal facilities; landfills that receive industrial wastes; recycling facilities; steam electric power generating facilities; transportation facilities; domestic sewage treatment plants greater than 1.0 MGD; and construction activities disturbing 5.0 or more acres.

There are an estimated 6500 facilities in Virginia (not including construction activities) that may be required to file permit applications by October 1, 1992. Of these, about 1950 facilities have applied as part of the group application process. The approximately 4500 remaining facilities would need to file individual applications or Notices of Intent to be covered under

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a general permit. A conservative estimate of the number of construction activity applications that will be received is between 3000 and 5000. Without the availability of a General Permit Notice of Intent, only individual permit applications will be acceptable.

Due to the large number of facilities that fall into the category of storm water discharges associated with industrial activity and the impending burdens on the NPDES permit program, EPA developed a four tiered set of priorities to be implemented over time for issuing storm water permits:

Tier I : Baseline Permitting: One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;

Tier II : Watershed Permitting: Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for permitting;

Tier III : Industry Specific Permitting: Specific industry categories will be targeted for individual or industry-specific permits; and

Tier IV : Facility Specific Permitting: A variety of factors will be used to target specific facilities for individual permits.

EPA anticipated that storm water general permits would be used to permit the majority of storm water discharges in the first phase of the program. They have been developing two storm water general permits for issuance in states for which EPA has the NPDES permitting responsibility. EPA's general permits, which have been held up in negotiations with the Office of Management and Budget (OMB) since February 1992, have now been finalized and were published in the Federal Register in early September.

The Board intends to develop storm water general permits for all the categories of facilities identified in the federal regulation and intends to use EPA's storm water general permits as a guide for these storm water general permits. Due to the delays EPA has had in finalizing their general permits, the Board has not developed any storm water general permits at this time, and will not have storm water general permits available before October 1, 1992. This means that an individual permit application is the only application option available for facilities in Virginia that have not applied as part of the group application process.

Necessity For Action: The federal storm water regulations require storm water permit applications from all facilities covered by the regulations that discharge storm water associated with industrial activity. Due to the large number of facilities that are required to file storm water permit applications by

October 1, 1992, the Board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of the first "Tier" of storm water permits.

The Board proposes to adopt a regulation to allow the filing of a VPDES General Permit Registration Statement for storm water discharges associated with industrial activity to satisfy the permit application requirements of the federal storm water permitting regulations. The Registration Statement will also serve as a Notice of Intent to be covered by applicable storm water general permits when these become available during the next twelve months.

Issuance of the General Permit Registration Statement will reduce the application costs and paperwork burden for those dischargers who wish to be covered under a general permit. It will also reduce the administrative time and burden for the Board in processing individual permits. Thus, it will improve the administrative efficiency of the Board's permitting program and allow staff resources to be concentrated on developing the storm water general permits and individual permits for those facilities which have more potential for impacting water quality in Virginia.

Summary:

This regulation will establish a VPDES General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which will serve as the required Notice of Intent for coverage under a general permit. It also allows dischargers to comply with the October 1, 1992, federal application deadline. This Registration Statement will reduce the regulatory burden on the permittee compared to the process of submitting an individual application. It will allow the Board to devote more resources to developing storm water general permits and issuing individual permits to pollution sources with greater potential for water quality impacts.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The State Water Control Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY: /s/ Richard N. Burton
Executive Director
Date: September 22, 1992

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APPROVED BY: /s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: September 16, 1992

APPROVED BY: /s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: September 17, 1992

FILED WITH: Joan W. Smith
Registrar of Regulations
Date: September 22, 1992

VR 680-14-15. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated With Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subparagraphs (1) through (10) of the "Industrial Activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR Part 401 [1992]); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subparagraph (11) of the "Industrial Activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities

include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

"Industrial Activity" - the following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under category (11) of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(1) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities

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described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (1) - (7) or (9) - (11) of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25 (OMB SIC Manual, 1987), (and which are not otherwise included within categories (2) - (10)).

§ 2. Purpose.

This VPDES General Permit Registration Statement Regulation for Storm Water Discharges Associated with Industrial Activity is intended to satisfy the federal application requirements under 40 CFR Part 122.26 (1992) for storm water discharges associated with industrial activity and may serve as the Notice of Intent for any

storm water general permits developed by the State Water Control Board (Board) if requested by the owner/operator, and may satisfy the Local Government Notification requirement if requested by the owner/operator.

§ 3. Authority for Regulation.

The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 (5), (6), (7), (9), (10), (14); -44.16; -44.17 of the Code of Virginia.

§ 4. Delegation of Authority.

The Executive Director, or his designee, may perform any act of the Board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia. Additionally, pursuant to Part X of the Permit Regulation (VR 680-14-01), the delegation of VPDES permitting and enforcement authority to the Department of Mines, Minerals and Energy for coal surface mining operations is hereby affirmed for storm water discharges from such operations.

§ 5. Effective Date of the General Permit Registration Statement Regulation.

This VPDES General Permit Registration Statement Regulation for Storm Water Discharges Associated with Industrial Activity will become effective upon filing with the Registrar of Regulations. After the promulgation of general permits for storm water discharges by the Board, a Registration Statement filed pursuant to this regulation may be acceptable as the Notice of Intent to be covered under those storm water general permits if requested by the owner/operator, and may satisfy the Local Government Notification requirement if requested by the owner/operator.

§ 6. Registration Statement.

A. The owner/operator of a facility with storm water discharges associated with industrial activity who intends to be covered by a VPDES general permit shall submit a complete Registration Statement that consists of two parts:

(1) Notice of Intent (NOI). EPA Form "Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit" (40 CFR Part 122, Federal Register Vol. 57, Wednesday, September 9, 1992); and

(2) Local Government Notification. Notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

B. The owner/operator of an existing facility with storm water discharges associated with industrial activity who intends to be covered by a VPDES general permit shall submit an NOI by October 1, 1992. Such owner/operator shall then submit a local government notification by March 15, 1993.

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C. The owner/operator of a new facility with storm water discharges associated with industrial activity that begins operation after October 1, 1992, who intends to be covered by a VPDES general permit shall submit a complete Registration Statement 30 days prior to the commencement of the industrial activity at the facility.

D. The Registration Statement shall be submitted to:

*State Water Control Board
Storm Water Permits Section
4900 Cox Road
Glen Allen, VA 23060*

§ 7. Individual Permits.

If the Board determines that a Board promulgated general permit is not appropriate for an industrial activity, the owner/operator shall apply for an individual permit within 30 days of receipt of notice from the Executive Director that a general permit is not appropriate.

If an owner/operator determines that a Board promulgated general permit is not appropriate for an industrial activity, the owner/operator shall notify the Executive Director. Within 30 days of such notification, the owner/operator shall apply for an individual permit.

STATE CORPORATION COMMISSION

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 16, 1992

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

CASE NO. INS920377

Ex Parte: In the matter of
adopting Rules Governing Actuarial
Opinions and Memoranda

ORDER SETTING HEARING

WHEREAS, Virginia Code § 12.1-13 provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction and Virginia Code §§ 38.2-223 and 38.2-3127.1 provide that the Commission is authorized to issue reasonable rules and regulations necessary to provide standards and guidelines for statements of actuarial opinion;

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed regulation entitled "Rules Governing Actuarial Opinions and Memoranda"; and

WHEREAS, the Commission is of the opinion that a hearing should be held to consider the adoption of the proposed regulation;

THEREFORE, IT IS ORDERED:

(1) That the proposed regulation entitled "Rules Governing Actuarial Opinions and Memoranda" be appended hereto and made a part hereof, filed and made a part of the record herein;

(2) That a hearing be held in the Commission's 13th Floor Courtroom, Jefferson Building, Bank and Governor Streets, Richmond, Virginia at 10:30 a.m. on November 3, 1992, for the purpose of considering the adoption of the proposed regulation;

(3) That, on or before October 23, 1992, any person desiring to comment on the proposed regulation shall file such comments in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23216;

(4) That an attested copy hereof, together with a copy of the proposed regulation, be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner, Alfred W. Gross, who shall forthwith give further notice of the proposed regulation and hearing by mailing a copy of this Order together with a copy of the proposed regulation to all fraternal benefit societies licensed pursuant to Chapter 41 of Title 38.2 and all other companies licensed pursuant to Title 38.2 of the Code of Virginia to write and reinsure policies providing for any

form of life insurance or annuity benefits; and

(5) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

Rules Governing Actuarial Opinions and Memoranda
(Insurance Regulation No. 45).

§ 1. Purpose

The purpose of this regulation is to prescribe:

A. *Guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection B.1 of § 38.2-3127.1 of the Code of Virginia, and for memoranda in support thereof;*

B. *Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from filing the actuarial opinion prescribed by subsection B.1 of § 38.2-3127.1 of the Code of Virginia; and*

C. *Rules applicable to the appointment of an appointed actuary.*

§ 2. Authority

This regulation is adopted and promulgated by the Commission pursuant to Virginia Code §§ 12.1-13, 38.2-223, and 38.2-3127.1. This regulation will take effect for annual statements for the year-ending December 31, 1992.

If a foreign or alien company's state of domicile makes provision in its Insurance Code or regulations for a later effective date, this later effective date will apply to the company, but under no circumstance will the effective date apply beyond December 31, 1993.

§ 3. Scope

A. *This regulation shall apply to all companies subject to the provisions of Virginia Code § 38.2-3127.1, including fraternal benefit societies licensed under Chapter 41 of Title 38.2 and all other companies licensed under Title 38.2 of the Code of Virginia to write and reinsure policies or agreements providing any form of life, life insurance, or annuity benefits as those terms are defined in Virginia Code §§ 38.2-102 through 38.2-107.1. This regulation shall be applicable to all annual statements filed with the Commission after the effective date of this regulation. Except with respect to companies which are exempted pursuant to Section 6 of this regulation, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 8 of this regulation, and a memorandum in support thereof in accordance with Section 9 of this regulation, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to Section 7 of this regulation.*

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B. Notwithstanding the foregoing, the Commission may require any company otherwise exempt pursuant to this regulation to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 8 and 9 of this regulation if, in the opinion of the Commission, an asset adequacy analysis is necessary with respect to the company.

§ 4. Definitions

A. Actuarial Standards Board

"Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

B. Annual Statement

"Annual Statement" means that statement required by § 38.2-1300 of the Code of Virginia to be filed by the company with the Commission annually.

C. Appointed Actuary

"Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Section 5C of this regulation to provide the actuarial opinion and supporting memorandum as required by § 38.2-3127.1 of the Code of Virginia.

D. Asset Adequacy Analysis

"Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Section 5D of this regulation. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

E. Commission

"Commission" means the Virginia State Corporation Commission.

F. Commissioner

"Commissioner" means the Insurance Commissioner, Director, Superintendent or other supervising regulatory official of a given state who is responsible for administering the insurance laws of said state.

G. Company

"Company" means a life insurer, company or fraternal benefit society subject to the provisions of this regulation.

H. Non-Investment Grade Bonds

"Non-Investment Grade Bonds" are those which are (i) rated 3, 4, 5 or 6 by the NAIC Securities Valuation Office, or (ii) if not rated by the Securities Valuation Office, are rated in an equivalent grade by a national rating agency

recognized by the Commission.

I. Qualified Actuary

"Qualified Actuary" means any individual who meets the requirements set forth in Section 5B of this regulation.

§ 5. General Requirements

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 8 of this regulation; provided, however, that any company exempted pursuant to Section 6 of this regulation from submitting a statement of actuarial opinion in accordance with Section 8 of this regulation shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Section 7 of this regulation.

(2) If in the previous year a company provided a statement of actuarial opinion in accordance with Section 7 of this regulation, and in the current year fails the exemption criteria of Sections 6C(1), 6C(2) or 6C(5) to again provide an actuarial opinion in accordance with Section 7, the statement of actuarial opinion in accordance with Section 8 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 7 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 8.

(3) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by such company with the commissioner of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in Virginia.

(4) Upon written request by the company, the Commission may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries; and

State Corporation Commission

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and

(3) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(4) Has not been found by the Commission (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

(a) Violated any provision of, or any obligation imposed by Title 38.2 of the Code of Virginia or other law in the course of his or her dealings as a qualified actuary; or

(b) Been found guilty of fraudulent or dishonest practices; or

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(d) Submitted to the Commission during the past five (5) years, pursuant to this regulation, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this regulation, including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the Commission of any action taken by the commissioner of any other state similar to that under Paragraph (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation, either directly by or by the authority of the board of directors through an executive officer of the company. The company shall give the Commission timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Section 5B. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commission timely written notice in the event the actuary ceases to be appointed or retained as an appointed

actuary or to meet the requirements set forth in Section 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this regulation:

(1) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with Section 8 of this regulation; and

(2) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered

(1) Under authority of Virginia Code § 38.2-3127.1, the statement of actuarial opinion shall apply to all in-force business on the statement date regardless of when or where issued, e.g., reserves reported in Exhibits 8, 9 and 10 of the NAIC annual statement for life insurers, and claim liabilities reported in Exhibit 11, Part I of such statement, and equivalent items in the separate account statement(s) or other annual financial statements filed pursuant to Virginia Code §§ 38.2-1300, 38.2-1301 or 38.2-4126.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth for policies providing life insurance, annuity or endowment benefits in Virginia Code §§ 38.2-3137, 38.2-3138, 38.2-3141, and 38.2-3142; for policies providing disability, accident and sickness benefits in the Commission's Rules Governing Reserve Standards for Accident and Sickness Insurance Policies (Insurance Regulation 15) and any supplemental and related rules and regulations; and for certain other companies affected by this regulation in Virginia Code §§ 38.2-1311, 38.2-3816, 38.2-3923, 38.2-4010, 38.2-4011 and 38.2-4125; the company shall establish such additional reserve.

(3) For years ending prior to December 31, 1994, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

December 31, 1992: The additional reserve divided by three.

December 31, 1993: Two times the additional reserve divided by three.

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(4) Additional reserves established under Paragraphs (2) or (3) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

§ 6. Required Opinions

A. General

In accordance with § 38.2-3127.1 of the Code of Virginia, every company doing business in Virginia shall annually submit the opinion of an appointed actuary as provided for by this regulation. The type of opinion submitted shall be determined by the provisions set forth in this Section 6 and shall be in accordance with the applicable provisions in this regulation.

B. Company Categories

For purposes of this regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

(1) Category A shall consist of those companies whose admitted assets do not exceed \$20 million;

(2) Category B shall consist of those companies whose admitted assets exceed \$20 million but do not exceed \$100 million;

(3) Category C shall consist of those companies whose admitted assets exceed \$100 million but do not exceed \$500 million; and

(4) Category D shall consist of those companies whose admitted assets exceed \$500 million.

C. Exemption Eligibility Tests

(1) Any Category A company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this regulation for the year in which these criteria are met. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.10.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.30.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(2) Any Category B company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this regulation for the year in which the criteria are met. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.07.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.40.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(3) Any Category A or Category B company that meets all of the criteria set forth in Paragraph (1) or (2) of this subsection, whichever is applicable, is exempted from submission of a statement of actuarial

opinion in accordance with Section 8 of this regulation unless the Commission specifically indicates to the company that the exemption is not to be taken.

(4) Any Category A or Category B company that, for any year beginning with the year in which this regulation becomes effective, is not exempted under Paragraph (3) of this subsection shall be required to submit a statement of actuarial opinion in accordance with Section 8 of this regulation for the year for which it is not exempt.

(5) Any Category C company that, after submitting an opinion in accordance with Section 8 of this regulation, meets all of the following criteria shall not be required, unless required in accordance with Paragraph (6) below, to submit a statement of actuarial opinion in accordance with Section 8 of this regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 8 of this regulation for that year. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.05.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.50.

(c) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(6) Any company which is not required by this Section 6 to submit a statement of actuarial opinion in accordance with Section 8 of this regulation for any year shall submit a statement of actuarial opinion in accordance with Section 7 of this regulation for that year unless as provided for by the second paragraph of Section 3 of this regulation the Commission requires

a statement of actuarial opinion in accordance with Section 8 of this regulation.

D. Large Companies

Every Category D company shall submit a statement of actuarial opinion in accordance with Section 8 of this regulation for each year beginning with the year in which this regulation becomes effective.

§ 7. Statement of Actuarial Opinion That Does Not Include an Asset Adequacy Analysis

A. General Description

The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of this regulation; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by § 38.2-3127.1 of the Code of Virginia.

B. Recommended Language

The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in Section 7.

(1) The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, [name and title of actuary], a member of the

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American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of the regulation."

(3) The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, []."

The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:

(a) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 of the NAIC annual statement for life insurers,

(b) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 of the NAIC annual statement for life insurers,;

(c) Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10 of the NAIC annual statement for life insurers; and

(d) Policy and contract claims-liability end of current year included in Exhibit 11, Part I of the NAIC annual statement for life insurers.

(4) If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in-force prepared by the

company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in-force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

OR

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying should follow the form indicated by Section 7B(10).

(6) The opinion paragraph should include the following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of Title 38.2 of the Code of Virginia, and related rules, regulations and administrative promulgations [OR: of the Insurance Law and regulations of the company's state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

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The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion."

(7) The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this Section 7. It shall include the following:

"This opinion is provided in accordance with Section 7 of the NAIC Actuarial Opinion and Memorandum Regulation. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for Section 7 is confirmed as follows:

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company (Section 6C).

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the excess of the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (Section 6C).

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of 0.50.

(d) To my knowledge, the company has not been designated by the NAIC as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(e) To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.

.....
Signature of Appointed Actuary

.....
Address of Appointed Actuary

.....
Telephone Number of Appointed Actuary"

(8) If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in Section 7B(6)(d) above to consistency should read as follows:

"... with the exception of the change described on Page [] of the annual statement (or in the preceding paragraph)."

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.

(9) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(10) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in-force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

"I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in-force as of December 31, [], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

.....
Signature of the Officer of the Company or Accounting Firm

.....
Address of the Officer of the Company or Accounting Firm

.....
Telephone Number of the Officer of the Company or Accounting Firm"

§ 8. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis

State Corporation Commission

A. General Description

The statement of actuarial opinion submitted in accordance with this section shall consist of:

- (1) A paragraph identifying the appointed actuary and his or her qualifications (see Section 8B(1));
- (2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see Section 8B(2)) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;
- (3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see Section 8B(3)), supported by a statement of each such expert in the form prescribed by Section 8E; and
- (4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities (see Section 8B(6)).
- (5) One or more additional paragraphs will be needed in individual company cases as follows:
 - (a) If the appointed actuary considers it necessary to state a qualification of his or her opinion;
 - (b) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;
 - (c) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement reserves for asset adequacy analysis.
 - (d) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.
 - (e) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.
 - (f) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which

form the basis for the actuarial opinion.

B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

- (1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

- (2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

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Statement Item	Reserves and Liabilities				Total Amount (1) + (2) - (3) (4)
	Asset Adequacy Tested Amounts Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
TOTAL (Exhibit 8 Item 1, page 3)	_____	_____		_____	_____
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
TOTAL (Exhibit 9 Item 2, Page 3)	_____	_____		_____	_____
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2. Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3. Dividend and Coupon Accumulations (Page 3, Line 5)					
TOTAL (Exhibit 10)	_____	_____		_____	_____
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
TOTAL (Exhibit 11, Part 1)	_____	_____		_____	_____
Separate Accounts (Page 3, Line 27)					
TOTAL (Sep Acct)	_____	_____		_____	_____
TOTAL RESERVES	=====	=====		=====	=====
IMR (Page __, Line __)					
AVR (Page __, Line __)					

(a) *Note: The additional actuarial reserves are the reserves established under Paragraphs (2) or (3) of Section 5E of this regulation.

(b) *Note: The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Section 5D of this regulation, by means of symbols which should be defined in footnotes to the table.

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(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement, ..."

OR

"I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Section 8E.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in-force and/or asset records prepared by the company or a third party, the reliance paragraph should include a sentence such as:

"I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

OR

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

Such a section must be accompanied by a statement by each person relied upon of a form substantially similar to that prescribed by Section 8E.

(6) The opinion paragraph should include the

following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of Title 38.2 of the Code of Virginia and related rules, regulations and administrative promulgations [OR: the Insurance Law and regulation of the state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion."

AND ONE OF THE FOLLOWING TWO PARAGRAPHS, WHICHEVER IS APPLICABLE:

"This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion."

OR:

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" [Describe the change or changes.]

AND:

"The impact of unanticipated events subsequent to the date of This opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 8.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Data Furnished by Other Persons

If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in-force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company or Accounting Firm

Address of the Officer of the Company or Accounting Firm

Telephone Number of the Officer of the Company or Accounting Firm"

AND/OR

"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company, Accounting Firm or the Security Analyst

Address of the Officer of the Company, Accounting Firm or the Security Analyst

Telephone Number of the Officer of the Company, Accounting Firm or the Security Analyst"

§ 9. Description of Actuarial Memorandum Issued for an Asset Adequacy Analysis

A. General

(1) In accordance with Virginia Code § 38.2-3127.1, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under a Section 8 opinion. The memorandum shall be made available for examination by the Commission upon its request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Commission.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Commission requests a memorandum and no such memorandum exists or if the Commission finds

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that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commission may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commission.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commission; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commission and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commission pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

B. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 8)

When an actuarial opinion under Section 8 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Section 5D of this regulation and any additional standards under this regulation. It shall specify:

(1) For reserves:

- (a) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
- (b) Source of liability in force;
- (c) Reserve method and basis;
- (d) Investment reserves;
- (e) Reinsurance arrangements.

(2) For assets:

- (a) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
- (b) Investment and disinvestment assumptions;

(c) Source of asset data;

(d) Asset valuation bases.

(3) For the analysis basis:

(a) Methodology;

(b) Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) Rationale for degree of rigor in analyzing different blocks of business;

(d) Criteria for determining asset adequacy;

(e) Effect of federal income taxes, reinsurance and other relevant factors.

(4) A Summary of Results

(5) Conclusion(s)

C. Conformity to Standards of Practice

The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

§ 10. Additional Considerations for Analysis

A. Aggregation

For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 8 of this regulation, reserves and assets may be aggregated by either of the following methods:

(1) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.

(2) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for

the various products or lines of business for which the results are so aggregated:

(a) Are developed using consistent economic scenarios, or

(b) Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of method (1), (2)(a) or (2)(b) above, whichever is applicable, and describe the aggregation in the supporting memorandum.

B. Selection of Assets for Analysis

The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Subsection C below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

C. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve

An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

D. Required Interest Scenarios

For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial

Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

(1) Level with no deviation;

(2) Uniformly increasing over ten (10) years at a half percent per year and then level;

(3) Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;

(4) An immediate increase of three percent (3%) and then level;

(5) Uniformly decreasing over ten (10) years at a half percent per year and then level;

(6) Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and

(7) An immediate decrease of three percent (3%) and then level.

For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where such five (5) year Treasury Note yield would be at fifty percent (50%) of its initial level.

The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.

E. Documentation

The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

§ 11. Opinion and Memorandum Submission Dates

The opinions and memoranda filed with the Commission pursuant to this regulation and Virginia Code § 38.2-3127.1 shall be subject to submission and due dates as given in this regulation and summarized in Exhibit A attached to these rules and regulation.

State Corporation Commission

§ 12. Severability

A. If any provision of this rule and regulation, or its application to any person, company or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this rule and regulation are severable.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-ONE (92)

VIRGINIA'S TWENTY-NINTH INSTANT GAME LOTTERY; "BEAT THE DEALER," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's twenty-ninth instant game lottery, "Beat the Dealer." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: September 21, 1992

DIRECTOR'S ORDER NUMBER TWENTY-TWO (92)

"BEAT THE DEALER"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Beat the Dealer" promotional game and drawing rules for the kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, September 24, 1992. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until September 30, 1992, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: September 18, 1992

DIRECTOR'S ORDER NUMBER TWENTY-THREE (92)

VIRGINIA STATE FAIR RAFFLE AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia State Fair Raffle and Drawing Rules for the daily raffle drawings, "Spot the Green Ball" and "Celebrate with Virginia Lottery and WRIC Channel 8," the three lottery promotional events which will be conducted during the 1992 Virginia State Fair. The events will take place at the fairgrounds in Richmond from September 24 - October 4, 1992. These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 9, 1992, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: September 23, 1992

DIRECTOR'S ORDER NUMBER TWENTY-FOUR (92)

"PICK 4 GREEN BALL PROMOTION," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Pick 4 Green Ball Promotion" game rules for the Virginia Lottery Pick 4 promotional program to be conducted from Monday, September 21, 1992 through Saturday, October 17, 1992. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 31, 1992, unless amended or rescinded by further Director's Order.

State Lottery Department

/s/ Kenneth W. Thorson
Director
Date: September 11, 1992

GOVERNOR

EXECUTIVE ORDER NUMBER FIFTY-FOUR (92)

DELEGATION OF AUTHORITY CONFERRED BY CHAPTER 893 OF THE 1992 ACTS OF ASSEMBLY

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and including, but not limited to, Section 2.1-39.1. of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters and to reserve powers, I hereby delegate to the individuals holding the positions named herein, the several powers and duties conferred upon me by the provisions of Chapter 893 of the 1992 Acts of Assembly (Appropriation Act for the 1992-1994 biennium), as detailed below:

I. Delegations of Authority to Officials in the Office of Administration

A. To the Secretary of Administration:

Item/Section Subject Matter

586 C: Approve certain leases as required by Chapter 597, 1986 Acts of Assembly.

§ 4-4.01 o. Receive reports and comments of the Department of Historic Resources, through the Department of General Services, and make final determination on plans for significant alterations, remodeling, redecoration, and restoration on state-owned registered historic landmarks.

§ 4-4.01 q. Amend project review and reporting procedures on lease agreements on state-owned property controlled by institutions of higher education and which meet the requirements of § 2.1-511, Code of Virginia.

§ 4-5.09. Approve agency certification of funds available and conformity to space planning procedures, or waiver requirements if a lease avoids a cost increase or results in measurable benefit to the state and funds are available.

§ 4-6.04 c. Approve basis for charging employees for parking spaces in state-owned facilities and determine the use of parking charges to pay costs of parking.

§ 4-8.01 c.2. Submit monthly reports on status of employment by the Attorney General, of special counsel in certain highway proceedings.

§ 4-8.01 c.3. Submit monthly report on changes in the level of compensation for job classes contained in compensation and classification plans.

B. To the Director, Department of General Services:

§ 2-1 C. Prescribe guidelines for purchase of equipment to be used in structures for which funds are provided.

§ 4-4.01 c. Approve preliminary requirements for capital projects.

§ 4-4.01 h. Require capital projects to conform with space planning guides approved by the Governor or General Assembly.

§ 4-4.01 k. Specify reporting requirements on capital projects and take actions necessary to meet legislative intent.

§ 4-8.01 b.7. Submit monthly report on waivers of the requirements on agencies acquiring property by lease to the Chairman of House Appropriations and Senate Finance Committees.

§ 4-8.01 d.1. Submit reports on progress of capital projects to Chairmen of House Appropriations and Senate Finance Committees.

C. To the Director, Department of Information Technology:

§ 4-5.06 e. Approve expenditure for motion picture television and radio services production.

D. To the Director, Department of Personnel and Training:

§ 4-6.02. Establish rules and regulations for compensation and expenses for employee training and academic study.

II. Delegation of Authority to Officials in the Office of Education

A. To the Secretary of Education:

§ 4-8.01 e.2. Submit monthly reports on status of certain State Council of Higher Education exemptions to policy which prohibits use of funds for certain academic programs.

III. Delegations of Authority to Officials in the Office of Finance

A. To the Secretary of Finance:

§ 3-3.02. Direct State Comptroller to restore disputed charges against working capital funds.

§ 4-1.02 a. Withhold appropriations under certain conditions to ensure spending in accordance with Appropriation Act.

§ 4-1.05 a.4. Report increases in appropriations.

§ 4-1.06 a.2. Certify funds available before payment for reappropriation is made in cases where the General Assembly provided for reappropriation payable from the general fund.

Governor

§ 4-1.06 a.3. Provide written approval for reappropriation of general fund appropriations which are unexpended on the last day of the first year of the biennium may be reappropriated for use in the second year of the biennium.

§ 4-1.06 a.4. & a.5. Prescribe management standards under which unexpended appropriations may be reappropriated for institutions of higher education and other state agencies.

§ 4-1.08. Act on appeals of agency heads regarding allotment of funds from appropriations required by this Act, by § 2.1-244 of the Code of Virginia and the authorization of rates of pay required by the Act.

§ 4-4.01 e.1. Develop guidelines for review of proposed capital projects to be financed by revenue bonds or federal loans.

§ 4-5.01 a. Designate appropriations for payment of claims settled pursuant to § 2.1-127, Code of Virginia.

§ 4-8.01 a.2. Report annually on nongeneral fund receipts above amounts specifically appropriated.

B. To the Director, Department of Planning and Budget:

271 A. Require assessment of outcomes of new program initiatives prior to recommending continued funding.

462 C. Approve physical plant projects for local jails prior to payments from reappropriated funds.

486 Adjust appropriations to provide operating funds needed if Dillwyn Deep Meadow Correctional Prototype Number 1 opens before July 1, 1993.

492 Adjust appropriations to provide operating funds needed if Haynesville Deep Meadow Correction Prototype Number 3 opens prior to January 15, 1994.

542 E. Approve physical plant projects for local detention and group homes prior to payments from reappropriated funds.

542 G. Expend amounts necessary for administration of financial assistance for local facilities confinement, juvenile confinement, or construction for the Department Of Youth Services.

586 A. Make transfers for payments on leases of instructional and research equipment from VA College Building Authority.

586 D. Fulfill reporting requirements to General Assembly for lease payments and total value of instructional and research equipment to be acquired by each higher education institution.

586 F. Approve emergency acquisitions of instructional and

research equipment by higher education institution after submission of proposed acquisition to House Appropriations and Senate Finance Committees.

590 A. Financial Assistance for Educational and General Services: transfers from this appropriation to implement the Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education.

§ 2-1 D.5. Capital Project Expenses: authorize preliminary design during current biennium for capital projects which have appropriations for planning for the succeeding biennium as long as preliminary design expenditures are paid out of the appropriations for succeeding biennium.

§ 2-1 F. Prescribe rules and regulations for expenditures from items identified as "Maintenance Reserve."

§ 4-1.06 a.1. Unallot funds from reappropriated balances of Executive Department agencies which relate to three categories of unexpended appropriations, with such unallotted amounts to revert to the general fund.

§ 4-2.01 a.1. Give written approval for agencies soliciting and accepting donations, gifts, grants or contracts.

§ 4-2.01 a.2. Issue written policies for agencies soliciting and accepting donations, gifts and grants under stated conditions.

§ 4-2.01 d.2. Higher Education planned excess revenues: receive documented information from institutions of higher education generating and retaining fees collected in excess of rates provided in § 4-2.01 c.3.

§ 4-2.02 a.2. Transfer funds to the general fund from the sale of surplus property not subject to § 2.1-457 of the Code of Virginia.

§ 4-4.01 d. Act of behalf of the Governor and affix the Governor's facsimile signature in the "Action by Governor" block on Form CO-2 for written approval of architectural or engineering planning, or construction of, or purchase of capital project before it is commenced or revised, as well as, release from capital project appropriation, sums necessary to pay for preparation of plans and specifications including sums exceeding appropriation.

§ 4-8.01 b. 1-6. Submit monthly reports on operating appropriations.

§ 4-8.01 c.1. Submit monthly reports on status of changes in positions and employment of state agencies affected to the Chairmen of House Appropriations and Senate Finance Committees.

§ 4-8.01 d.2. Submit monthly reports on progress of capital projects under which Governor's authority in § 4-4.01 i. which addresses projects not included in the

Appropriation Act and which meet specific requirements (e.g. auxiliary enterprise, continue effective operation of existing program).

§ 4-8.01 e.1. Submit monthly reports on status of new services requested by agencies and authorized by the Governor.

IV. Delegation of Authority to Officials in the Office of Health and Human Resources

A. To the Secretary of Health and Human Resources:

287 D. Implement recommendations of study linking public assistance benefits with certain health, school and work activities.

V. Delegation of Authority to Officials in the Office of Natural Resources

A. To the Secretary of Natural Resources:

399 A. Present recommendations to the 1993 General Assembly to expedite and improve the permit review process.

VI. Delegation of Authority to Officials in the Office of Public Safety

A. To the Secretary of Public Safety

§ 4-5.03. Authorize transfer of prison labor or farm commodities produced at any state agency to any other state agency.

Should conflicts arise concerning any action authorized by this Executive Order, such matters shall be resolved by the Governor.

This Executive Order is effective upon its signing and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 21st day of September, 1992.

/s/ Lawrence Douglas Wilder
Governor

EXECUTIVE ORDER NUMBER FIFTY-FIVE (92)

AUTHORITY AND RESPONSIBILITY UNDER THE FEDERAL INTERMODAL SURFACE TRANSPORTATION AND EFFICIENCY ACT OF 1991

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and, including, but not limited to, Section 2.1-39.1 of the Code of Virginia, and subject always to my continuing and

ultimate authority and responsibility to act in such matters, and to reserve powers, I hereby affirm and delegate to the Secretary of Transportation the powers and duties set out below as necessary for the Commonwealth to fulfill the requirements of the federal Intermodal Surface Transportation and Efficiency Act of 1991.

1. Make appropriate quarterly certifications and notify the federal Secretary of Transportation of the amounts of obligations expected to be incurred for surface transportation program projects in Virginia;

2. Certify the consistency of early acquisition of rights-of-way with the State transportation planning process and under the mandatory, comprehensive and coordinated land use, environment, and transportation planning process;

3. Establish agreements with local governments as needed for the designation and redesignation of metropolitan planning organizations and the determination of metropolitan area boundaries;

4. Receive long-range plans submitted by metropolitan planning organizations;

5. Approve, with concurrence of the Commonwealth Transportation Board, metropolitan transportation improvement programs;

6. Develop requests to the federal Secretary of Transportation, to designate additional areas as transportation management areas;

7. Provide reasonable opportunities for comments on the State Transportation Improvement Program, to citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties; and

8. Represent the Governor or an interstate study commission for the National Capitol Region.

This Executive Order is effective upon its signing and shall remain in full force and effect until October 1, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 27th day of August, 1992.

/s/ Lawrence Douglas Wilder
Governor

EXECUTIVE ORDER NUMBER FIFTY-SIX (92)

EMERGENCY TRAVEL AUTHORIZATION FOR TRUCKS HAULING GOODS TO DISASTER AREAS WITHIN THE STATES OF FLORIDA AND LOUISIANA

Governor

By virtue of the authority vested in me as Governor by the Constitution of Virginia and Section 44-146.17 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby authorize the Departments of State Police, Transportation, Motor Vehicles and the State Corporation Commission to grant temporary overweight/registration/license exemptions to carriers transporting essential emergency relief supplies to the States of Florida and Louisiana.

The gross weights shown below are the maximum allowed:

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 Axle)	44,000 pounds
Single Unit (3 Axle)	54,000 pounds
Tractor-Semitrailer (4 Axle)	75,000 pounds
Tractor-Semitrailer (5 Axle)	90,000 pounds
Tractor-Semitrailer (6 Axle)	90,000 pounds
Tractor-Twin Trailers (5 or more Axles) ..	90,000 pounds
Other Combinations (5 or more Axles) ...	90,000 pounds
Per inch or tire width in contact with road surface	850 pounds

In addition to described overweight transportation privileges, carriers are also exempt from registration with SCC/DMV. This includes the vehicles enroute and returning to their home base.

Please make certain that this information is communicated to all staff responsible for Permit issuance and Truck legalization enforcement.

This Executive Order is effective upon its signing and will remain in full force and effect until rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of August, 1992.

/s/ Lawrence Douglas Wilder
Governor

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The Safety and Health Codes Board adopted the following Federal OSHA Standards at its meeting on August 25, 1992:

1. Corrections to Process Safety Management of Highly Hazardous Chemicals, § 1910.119, and to the Amendment to Explosives and Blasting Agents, § 1910.109.

Effective date is November 15, 1992.

2. Amendment to the General Industry and Construction Industry Standards for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, §§ 1910.1001, 1926.58; Final Rule; and Correction to § 1926.58.

Effective date is November 15, 1992.

3. Revocation Asbestos Standard for Nonasbestiform Tremolite, Anthophyllite and Actinolite, § 1910.1101.

Effective date is November 15, 1992.

4. Corrections to the General Industry Standard for Occupational Exposure to Formaldehyde, § 1910.1048.

Effective date is November 15, 1992.

5. Correcting Amendments to the General Industry Standard for Air Contaminants, § 1910.1000.

Effective date is November 15, 1992.

6. Corrections to the Occupational Exposure to Bloodborne Pathogens, Final Rule, § 1910.1030.

Effective date is November 15, 1992.

7. Correcting Amendments to Update Addresses for

Obtaining Technical Manuals in the General Industry Standard for Occupational Exposure to Hazardous Chemicals in Laboratories, § 1910.1450, and General Industry Standard for Standards Organizations, § 1910.1500.

Effective date is November 15, 1992.

The Safety and Health Codes Board also adopted the following regulations at its August 25, 1992, meeting:

8. Amendment to Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permits Fees (VR 425-01-74).

Effective date is November 15, 1992.

9. Regulation for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos Containing Construction Wastes, incorporating the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) Final Rule: 40 CFR §§ 61.140, 61.141, 61.145, 61.146, 61.148, 61.150, except for subsection (a)(4), 61.154, except subsection (d), and 61.156 (VR 425-03-85.61).

Effective date is November 5, 1992.

Contact person for further information: John J. Crisanti, Director of Office of Enforcement Policy, (804) 786-2384.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA

General Notices/Errata

23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: VR 320-01-2. Regulations of the Board of Funeral Directors and Embalmers.

Publication: 8:25 VA.R. 4532 September 7, 1992.

Correction to Final Regulation:

Page 4533, column 2, § 1.2, line 12 should read "Title 32.1; Chapter 8 (§ 32.1-305 et seq.);"

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: VR 485-60-9202. Salvage Act Regulation.

Publication: 8:26 VA.R. 4623-4756 September 21, 1992.

Correction to Proposed Regulation:

Page 4668, column 1, § 1. Definitions, the definition of "Repair vehicle," change "Repair" to "Repaired."

Page 4668, column 2, § 3. Insurance companies or their authorized agents, subsection B, line 5, change § 46.2-1043.1" to "46.2-1603.1"

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

October 26, 1992 - 10 a.m. – Open Meeting
October 27, 1992 - 8 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; (iv) consider routine board business; and (v) conduct regulatory review.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.



DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

† **December 1, 1992 - 9:30 a.m.** – Open Meeting
The Virginia Association of Homes for Adults, Inc., Suite 101, United Way Building, 224 West Broad Street, Richmond, Virginia. ☒

Business will include further discussion on the goals and objectives for the Virginia Long-Term Care Ombudsman Program.

Contact: Etta V. Hopkins, Assistant Ombudsman, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402.

GOVERNOR'S ADVISORY BOARD ON AGING

† **October 29, 1992 - 8 a.m.** – Open Meeting
† **October 30, 1992 - 9 a.m.** – Open Meeting
Sheraton Inn, Oceanfront and 36th Street, Virginia Beach, Virginia. ☒ (Interpreter for deaf provided upon request)

The meeting is of the Governor's Advisory Board on Aging and the Area Agency on Aging Directors. The sessions will consist of committee meetings and business meetings.

Contact: Catherine P. Saunders, Special Assistant to the Commissioner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Farmers' Market Board

† **October 22, 1992 - 1 p.m.** – Open Meeting
Capitol Building, House Room 1, Capitol Square, Richmond, Virginia. ☒

Status reports on markets, finances and review RFP for operator of Eastern Shore of Virginia Farmers' Market. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Nancy Israel, Program Director, Farmers' Market Network, 1100 Bank St., Richmond, VA 23219, telephone (804) 371-6157.

Virginia Winegrowers Advisory Board

† **November 10, 1992 - 10 a.m.** – Open Meeting
Virginia Polytechnic Institute and State University, Food Science and Technology Building, Blacksburg, Virginia.

Calendar of Events

The board will hear committee and project monitor reports and review old and new business.

Contact: Wendy Rizzo, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

† October 30, 1992 - 9 a.m. - Open Meeting
General Assembly Building, Senate Room A, Capitol Street, Richmond, Virginia. ☐

The board will consider final regulations and revisions to (i) the state implementation plan concerning procedures for public participation in the regulatory adoption process; (ii) the technical compliance assistance program for small business; (iii) motor vehicle emissions and inspection program; and (iv) prevention of significant deterioration permit program.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 26, 1992 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

Receipt and discussion of reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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October 28, 1992 - 10 a.m. - Public Hearing
First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia.

October 28, 1992 - Written comments may be submitted until 10 a.m. on this date.

Notice is hereby given in accordance with § 9.6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: VR 125-01-2. Advertising, VR 125-01-3. Tied House, VR 125-01-4. Requirements for Product Approval, VR 125-01-5. Retail Operations, and VR 125-01-7. Other Provisions. Numerous regulations are being amended, some of which relate to (i) the advertising of nonalcoholic beer and nonalcoholic wine; (ii) allowing combination packaging; (iii) manufacturers, bottlers and wholesalers supplying placemats, coasters, napkins and back-bar pedestals to retailers under limited conditions; (iv) permitting novelty and specialty items with alcoholic beverage advertising to be given to

patrons on the premises of retail licensees; (v) no limitation on the number of distilled spirits brands which may be listed on clip-ons and table tents; (vi) allowing brewpubs to use growlers to sell their beer to consumers for off-premises consumption; (vii) prohibiting a licensed club from obtaining a banquet special events license or a mixed beverage special events license for use on its premises; (viii) the definition of "gift shop"; (ix) the acceptance of credit or debit cards by A.B.C. stores for the retail purchase of alcoholic beverages; and (x) keg registration.

Statutory Authority: §§ 4-7(1), 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, 2901 Hermitage Rd., Richmond, VA 23261, telephone (804) 367-0616.

AUCTIONEERS BOARD

† October 20, 1992 - 11:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

An open meeting to conduct board business and other matters which may require board action.

Contact: Mr. Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

October 22, 1992 - 9:30 a.m. - Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☐

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-7390.

VIRGINIA AVIATION BOARD

October 20, 1992 - 9 a.m. - Open Meeting
Chamber of Commerce Building, Melfa, Virginia. ☐

A meeting to discuss matters of interest to aviation in Virginia.

Contact: Nancy C. Brent, Virginia Department of Aviation, 4508 S. Laburnum Ave., Richmond, VA 23232-2422, telephone (804) 786-6284.

Calendar of Events

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

NOTICE: CHANGE IN MEETING LOCATION

October 29, 1992 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☒

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by October 22, 1992.

December 3, 1992 - 10 a.m. - Open Meeting
State Capitol, Senate Room 4, Capitol Square, Richmond, Virginia. ☒

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by November 24, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

BOARD OF COMMERCE

October 26, 1992 - 10 a.m. - Open Meeting
Department of Commerce, Room No. 1, 3600 West Broad Street, Richmond, Virginia. ☒

A regular quarterly meeting of the Board of Commerce. Agenda items expected are (i) reports from subcommittees reviewing citizen-member participation on occupational regulatory boards; (ii) revision of the "Agency Rules of Practice for Hearing Officers"; (iii) subcommittee report on trends in continuing education requirements for professionals; and (iv) a report from delegates to the national convention of state regulatory agencies (CLEAR).

Contact: Alvin D. Whitley, Board Secretary, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8564.

DEPARTMENT OF CONSERVATION AND RECREATION (BOARD OF)

October 21, 1992 - 10 a.m. - Open Meeting
Southwest Virginia Museum, Big Stone Gap, Virginia. ☒

A general business meeting of the board.

Contact: Karen Spencer, Executive Secretary Senior,

Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124 or (804) 786-2121/TDD ☎.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

October 21, 1992 - 10 a.m. - Open Meeting
Buckingham Correctional Center, Dillwyn, Virginia. ☒

† **November 18, 1992 - 10 a.m. - Open Meeting**
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

A regular monthly meeting to consider matters as may be presented to the board.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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November 18, 1992 - 10:30 a.m. - Public Hearing
6900 Atmore Drive, Richmond, Virginia.

November 20, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to incorporate the Work/Study Release Program Standards as an integral part of the Standards for Jails and Lockups.

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

Contact: Mike Howerton, Chief of Operations, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

Liaison Committee

† **November 19, 1992 - 9:30 a.m. - Open Meeting**
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

The committee will continue to address and discuss criminal justice issues.

Contact: Mrs. Vivian T. Toler, Secretary to the board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

October 19, 1992 - 9 a.m. - Open Meeting

Calendar of Events

November 23, 1992 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☒

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Board for
Cosmetology, Department of Commerce, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF DENTISTRY

† **November 21, 1992 - 9 a.m. - Open Meeting**
Southern States Building, 6606 West Broad Street,
Richmond, Virginia. ☒

The Regulatory-Legislative Committee will meet to
discuss possible regulation changes. This meeting is
open to the public. No public comment will be taken.

Contact: Nancy Taylor Feldman, Executive Director, 1601
Rolling Hills Dr., Richmond, VA 23229-5005, telephone
(804) 662-9906.

DISABILITY SERVICES COUNCIL

† **October 19, 1992 - 10 a.m. - Open Meeting**
Department of Rehabilitative Services, 4901 Fitzhugh
Avenue, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

The council will discuss reporting guidelines to be
provided to the local disability services board.

† **October 29, 1992, (Tentative) - 10 a.m. - Open Meeting**
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter
for deaf provided upon request)

A meeting to ensure adequate public notice of a
tentative meeting is scheduled in the event that
business in not completed in the October 19, 1992,
meeting.

Contact: Betty Sparrow, Planner, 4901 Fitzhugh Ave.,
Richmond, VA 23230, telephone (804) 367-6905, (804)
367-0280/TDD ☎ or toll-free 1-800-552-5019/TDD ☎

BOARD OF EDUCATION

October 29, 1992 - 8 a.m. - Open Meeting
November 24, 1992 - 8 a.m. - Open Meeting
James Monroe Building, Conference Rooms D and E, 101
North 14th Street, Richmond, Virginia. ☒ (Interpreter for
deaf provided upon request)

The Board of Education and the Board of Vocational
Education will hold a regularly scheduled meeting.
Business will be conducted according to items listed

on the agenda. The agenda is available upon request.
Public comment will not be received at the meeting.

Contact: Dr. Margaret Roberts, Executive Director, Board
of Education, P.O. Box 2120, Richmond, VA 23216,
telephone (804) 225-2540.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

November 5, 1992 - 5:30 p.m. - Open Meeting
December 3, 1992 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, 10,001
Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund
Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services
Coordinator, Chesterfield Fire Department, P.O. Box 40,
Chesterfield, VA 23832, telephone (804) 748-1236

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† **October 28, 1992 - 6:30 p.m. - Open Meeting**
Gloucester County Administration Building, Main Street and
Duval Avenue, Gloucester, Virginia. ☒ (Interpreter for deaf
provided upon request)

The fall quarterly meeting of the committee will
address (i) final review of the County Hazardous
Materials Plan before forwarding to Board of
Supervisors; (ii) adoption of by-laws; and (iii) review
of membership.

Contact: Georgette N. Hurley, Assistant County
Administrator, P.O. Box 329, Gloucester, VA 23061,
telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - GOOCHLAND COUNTY

† **October 21, 1992 - 7 p.m. - Open Meeting**
General District Courtroom, Goochland Courthouse
Complex, Goochland, Virginia. ☒

A regularly scheduled semi-annual meeting of the
Goochland LEPC.

Contact: Gregory K. Wolfrey, County Administrator,
Emergency Services Coordinator, P.O. Box 10, Goochland,
VA 23063, telephone (804) 556-5300.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

October 19, 1992 - 1:30 p.m. - Open Meeting

1 County Complex Court, Potomac Conference Room,
Prince William, Virginia. ☒

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, 1 County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

VIRGINIA EMERGENCY RESPONSE COUNCIL

October 29, 1992 - 10 a.m. - Open Meeting

Virginia Department of Waste Management, Conference Room B, Monroe Building, 101 North 14th Street, Richmond, Virginia. ☒

This meeting will provide the VERC with an update of issues concerning local governments/Local Emergency Planning Committees (LEPCs) and Emergency Planning and Community "Right-to-Know"; and this meeting will also have the VERC consider both a resolution praising the late Chief Warren E. Isman, of the Fairfax County Fire Department for his contributions towards hazardous materials response in Virginia, as well as a request by the Fairfax Joint LEPC to designate specific facilities for emergency planning.

Contact: Cathy L. Harris, Environmental Program Manager, Virginia Department of Waste Management, 14th Floor, Monroe, Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2513, 225-2631 or (804) 371-8737/TDD ☎

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

October 21, 1992 - Noon - Open Meeting

Radisson Hotel, 1900 Pavilion Drive, Virginia Beach, Virginia. ☒ Interpreter for deaf provided by request.

A regular meeting of the board.

Contact: Nancy L. Munnikhaysen, Virginia Employment Commission, 703 E. Main St., Richmond, VA 23219, telephone (804) 371-6001 or (804) 371-8050/TDD ☎

BOARD OF FORESTRY

† October 21, 1992 - 9 a.m. - Open Meeting

Shelton Conference Center, Garland Gray Forestry Center, Rt. 2, Box 111, Courtland, Virginia (Route No. 607).

A general business meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555/TDD ☎

GOVERNOR'S TASK FORCE ON FUELS TAX EVASION

October 19, 1992 - 9:30 a.m. - Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☒

The task force will examine fuels tax legislation and the process and resources associated with fuels tax administration. No public comment will be received at this meeting.

Contact: Ralph M. Davis, Assistant Commissioner for Administrative Services, Department of Motor Vehicles, Room 710, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-6615.

GOVERNOR'S COMMISSION ON VIOLENT CRIME

Inmate Productivity Subcommittee

October 21, 1992 - 10 a.m. - Open Meeting

General Assembly Building, 9th Floor, West Conference Room, Richmond, Virginia. ☒

Open meetings and mini-public hearings.

Contact: Kris Ragan, Special Assistant to the Secretary of Public Safety and the Governor's Commission on Violent Crime, Office of the Governor, Richmond, VA, telephone (804) 786-5351 or (804) 786-7765/TDD ☎



DEPARTMENT OF HEALTH (STATE BOARD OF)

October 23, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-18-000**.

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Waterworks Regulations: Total Coliform and Surface Water Treatment. These amendments incorporate the Federal Total Coliform Rule and Surface Water Treatment Rule into the Virginia Waterworks Regulations. The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the Federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency (USEPA) mandates to retain this authority. The purpose of these regulations is to retain primacy by adopting regulations as stringent as the federal regulations for total coliforms and surface water treatment. These regulations, which are amendments to the existing Waterworks Regulations and which incorporate the federal Total Coliform Rule (TCR) and Surface Water Treatment Rule (SWTR), will conform the state regulations to federal regulations and should avoid duplicate enforcement action by the USEPA in Virginia under federal law.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Written comments may be submitted until October 23, 1992, to Allen R. Hammer, Director, DWSE, 1500 East Main Street, Room 109, Richmond, VA 23218.

Contact: Robert B. Taylor, Technical Service Administrator, 1500 E. Main St., Room 109, Richmond, VA 23218, telephone (804) 786-5566.

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October 22, 1992 - 7 p.m. – Public Hearing
Spotsylvania County Courthouse, Board of Supervisor's Room, Spotsylvania, Virginia.

October 27, 1992 - 7 p.m. – Public Hearing
South Boston City Council Chambers, South Boston, Virginia.

November 9, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to adopt regulations entitled: **VR 355-18-014. Waterworks Operation Fee.** The purpose of this proposed regulation is to assess an annual operations fee (not to exceed \$160,000) on the owners of waterworks. The amount of the fee is based on the number of persons served, number of connections, or the classification of the waterworks. The revenue generated by this regulation will supplement funding to implement the 1986 amendments to the federal Safe Drinking Water Act (SWDA) and will be deposited into the Waterworks Technical Assistance Fund established in the state treasury by § 32.1-171.1 B.

Statutory Authority: §§ 32.1-70 and 32.1-71.1 of the Code of

Virginia.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, 1500 E. Main St., Suite 109, Richmond, VA 23219, telephone (804) 786-5566.

† **October 26, 1992 - 10 a.m. – Open Meeting**
Patrick Henry Hotel, 617 South Jefferson Street, Roanoke, Virginia. ☒ (Interpreter for deaf provided upon request)

† **October 27, 1992 - 9 a.m. – Open Meeting**
Blue Cross/Blue Shield of Virginia Building, 602 South Jefferson Street, Roanoke, Virginia. ☒ (Interpreter for deaf provided upon request)

October 26 - Worksession and tour of CHIP program - Informal dinner at 7 p.m. at the Patrick Henry Hotel.

October 27 - Adjournment - Business meeting.

Contact: Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

BOARD OF HEALTH PROFESSIONS

October 20, 1992 - 8:30 a.m. – Open Meeting
Sheraton Inn and Conference Center, Fredericksburg, Virginia. ☒

The annual meeting of the board. Reports on legislative and other studies will be revised and adopted and officers for calendar year 1993 will be elected.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

October 27, 1992 - 9:30 a.m. – Open Meeting
November 24, 1992 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Virginia Room, Richmond, Virginia. ☒

A regular monthly meeting.

Contact: Kim Schulte Barnes, Information Officer, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

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November 20, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health

Services Cost Review Council intends to repeal regulations entitled VR 370-01-000, Public Participation Guidelines and adopt regulations entitled: VR 370-01-000:1. Public Participation Guidelines. This action repeals existing regulations and enacts new Public Participation Guidelines for soliciting the input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14.7:1 and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., Sixth Floor, Richmond, VA 23219, telephone (804) 786-6371.

November 21, 1992 -- Written comments may be submitted through this date.

November 24, 1992 - 1 p.m. -- Public Hearing
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14.7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: VR 370-01-001. The Rules and Regulations of the Virginia Health Services Cost Review Council. The purpose of the proposed action is to clarify the definition of "charity care" as utilized in the analysis of the various filings submitted by health care institutions.

Statutory Authority: §§ 9-158 (A) and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

DEPARTMENT OF HISTORIC RESOURCES

Board of Historic Resources and State Review Board

October 21, 1992 - 10 a.m. -- Open Meeting
Fredericksburg Area Museum and Cultural Center, Historic Council Chamber, 3rd Floor, 907 Princess Ann Street, Fredericksburg, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places.

Properties to be considered by the State Review Board and the Virginia Board of Historic Resources for nomination to the Virginia Landmarks Register and the National Register of Historic Places:

1. Annandale, Botetourt County
2. Lantz Hall, Town of Woodstock, Shenandoah County
3. Lincoln Theatre, Town of Marion, Smyth County
4. Woodson's Mill, Nelson County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1943/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

November 3, 1992 - 9 a.m. -- Open Meeting

December 1, 1992 - 9 a.m. -- Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

† October 21, 1992 - 9 a.m. -- Open Meeting

Kings Dominion, Maintenance Conference Room, Doswell, Virginia. ☒

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation, and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7150 or (804) 371-7089/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

October 20, 1992 - 11 a.m. -- Open Meeting

601 South Belvidere Street, Richmond, Virginia. ☒

This will be the regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various

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committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within its 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.

This date of the regular meeting may be changed to October 15 or 16 to coincide with the Governor's Housing Conference. Please contact the authority for confirmation of the October meeting date.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INFORMATION MANAGEMENT

† **November 9, 1992 - 9 a.m.** – Open Meeting
1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ☒

A regular business meeting.

Contact: Linda W. Hening, Administrative Staff Specialist, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

Advisory Committee on Mapping, Surveying and Land Information Systems

† **October 22, 1992 - 10 a.m.** – Open Meeting
1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ☒

An organizational meeting.

Contact: Chuck Tyger, Chief Engineer, Systems and Software Management, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

October 19, 1992 - 1 p.m. – Open Meeting
Hampton, Virginia. (Meeting site will be announced later)

The regular meeting of the Advisory Commission on Intergovernmental Relations will be held in conjunction with the annual conference of the Virginia Municipal League.

Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices by October 9, 1992.

Contact: Robert H. Kirby, Secretary, 702 Eighth Street

Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎ .

LIBRARY BOARD

NOTICE: CHANGE IN MEETING DATE AND TIME

November 12, 1992 - 9 a.m. – Open Meeting
The Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss administrative matters of the Virginia State Library Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

LONGWOOD COLLEGE

Board of Visitors

† **October 26, 1992 - 9:30 a.m.** – Open Meeting
Longwood College, Ruffner Building, Virginia Room, Longwood, Virginia. ☒

A meeting to conduct routine business of the board.

Contact: William F. Dorrill, President, 102 High St., Farmville, VA 23909, telephone (804) 395-2001.

STATE LOTTERY BOARD

October 26, 1992 - 10 a.m. – Open Meeting
November 23, 1992 - 10 a.m. – Open Meeting
2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

MARINE RESOURCES COMMISSION

October 27, 1992 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland

board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎ .

MARY WASHINGTON COLLEGE

Board of Visitors

October 24, 1992 - 8:30 a.m. - Open Meeting
Woodard Campus Center, Red Room, Mary Washington College, Fredericksburg, Virginia. ☒

Committee meetings will be held throughout the day on Friday, October 23. The full board will meet on October 24 to act on resolutions presented by the committees.

Contact: Vicki Campbell, Office of the President, 1301 College Ave., Fredericksburg, VA 22401-5358, telephone (703) 899-4621, (703) 899-4624/TDD ☎ or FAX (703) 899-4964.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

November 20, 1992 - Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt and amend regulations entitled: VR 460-01-29.4, 460-01-70, 460-02-2.2100, 460-02-2.6100, 460-02-4.2230, 460-04-4.2230. **Health Insurance Premium Payment Program (HIPP).** The purpose of this proposal is to implement the mandates of § 1906 of the Social Security Act to provide for (i) the identification of cases in which the enrollment of Medicaid recipients in group health plans is likely to be cost effective; (ii) the requirement that recipients in such cases enroll in the available group health plan as a condition of continued eligibility for Medicaid; (iii) the provision

for payment of premiums and other cost-sharing obligations for items and services otherwise covered by Medicaid; and (iv) the treatment of the group health plan as a third party liability resource resulting, thereby, in such plans becoming primary sources of health care payments for the affected Medicaid recipients.

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

Written comments may be submitted through November 20, 1992 at 4:30 p.m. to: C. Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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† **December 18, 1992 -** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: VR 460-01-74 and 460-04-4.2600. **Drug Utilization Review Program Regulations.** The purpose of this proposal is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws. The sections of the State Plan for Medical Assistance affected by this action are section 4 to which is added new preprinted pages 74 through 74b and new state regulations VR 460-04-4.2600.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving outpatient drugs who do not reside in a nursing home. Currently, the Commonwealth does not have a DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and often, inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

Calendar of Events

OBRA 90 § 4401 placed four key DUR requirements on DMAS: (i) implementation of a retrospective DUR; (ii) provision for prospective DUR before the dispensing of prescriptions; (iii) establishment of a DUR board; and (v) development of physician and pharmacist educational interventions and programs.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of the Board of Medical Assistance Services' (BMAS) action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) requires the denial of federal financial participation (FFP) to states if drug use review (DUR) in conformance with § 1927(g) of the Social Security Act is not in effect by January 1, 1993.

Retrospective DUR focuses on the therapeutic outcomes of pharmaceutical services. Retrospective DUR applies clinical, therapeutically oriented criteria to pharmacy paid claims data in order to identify potential drug therapy problems (patients whose drug therapy relates to increased risk for drug-induced illnesses) in Medicaid clients. Once a potential problem has been identified in an individual, the physician and/or pharmacist involved in the patient's drug therapy will be notified and provided with an explanation of why a potential drug therapy problem is thought to exist. It will then be up to the patient's physician and pharmacist to cooperatively modify the patient's drug therapy regimen if such modification is deemed appropriate.

Prospective DUR recognizes and utilizes the pharmacist's ability to maximize therapeutic outcomes. As part of the prospective DUR requirements, the pharmacist is required to review patients' complete drug therapy before each prescription is filled. During the review of drug therapy, pharmacists will be responsible for screening for potential drug therapy problems, utilizing their knowledge as trained professionals and supported by computer-assisted data bases of clinical manuals approved by the Commonwealth's DUR Board.

The federal law established minimum requirements for patient consultation each time a prescription is dispensed, consistent with the pharmacist's professional judgment and applicable state laws. Pharmacists are also required to make a reasonable effort to maintain patient medical history profiles.

OBRA 90 required DMAS to appoint a DUR board. The DUR Board is a group of health care professionals

consisting of pharmacists, physicians, and nurses. The Board will recommend therapeutic criteria for the retrospective and the prospective DUR program for approval by BMAS and will be active in the design of the educational intervention programs. Currently, the Virginia Medicaid DUR Board consists of 13 members: 5 pharmacists, 6 physicians, and 2 nurses.

The last major requirement of OBRA 90 is that DMAS develop an educational intervention program for physicians and pharmacists. The DUR Board is responsible for identifying common drug therapy problems and DMAS is responsible for developing programs to educate physicians and pharmacists about these problems. Educational interventions can be accomplished through face-to-face discussions with practitioners or through written, oral or electronic reminders.

Impact: Several assumptions have been made about the savings from educational interventions and programs. Approximately 64% of the total Medicaid population uses prescription drugs. Data from other programs of this nature show that a potential drug therapy problem will be identified in 2% of these individuals. This represents approximately 7,853 people in FY 93 and FY 94. Educational intervention efforts will result in an overall reduction in drug expenditures of approximately \$17.00 to \$158.00 per individual receiving an intervention. A conservative estimate of \$24.00 has been used in projecting savings. The savings from the educational interventions would be \$47,041 GF (\$94,082 total) during FY 93 and \$102,996 GF (\$205,992 total) during FY 94.

The gross expense for implementing and operating the program in FY 93 will be \$34,841 GF (\$123,982 total). OBRA 90 allows the states 75% FFP for development of the program. During FY 94, the expense for ongoing operations will be \$90,346 GF (\$181,382 total). The net General Fund savings is \$12,200 in FY 93 and \$12,650 in FY 94.

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

Written comments may be submitted through December 18, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Drug Prior Authorization Advisory Panel

† October 30, 1992 - 3 p.m. - Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

The purpose of the scheduled session is to discuss the proposed criteria for drugs selected to be included in

the DMAS Drug Prior Authorization Program. If necessary, a second and final meeting will be held on Friday, November 13, 1992, at the same time and place.

Contact: Carol B. Pugh, Pharmacy D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

Drug Utilization Review Board

November 5, 1992 - 3 p.m. - Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting of the DMAS DUR Board. Routine business will be conducted.

Contact: Carol D. Pugh, Pharm. D., Drug Utilization Review Program Consultant, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

Joint Advisory Committees on Acupuncture

† **December 3, 1992 - 2 p.m. - Open Meeting**
6606 West Broad Street, Fourth Floor, Board Room 2, Richmond, Virginia. ☐

The committees will meet to review the final draft of proposed Regulations for Licensure of Acupuncturists and make recommendations to the Board of Medicine. The presiding chairman may entertain public comments on specific items as they relate to the proposed regulations. This is not a public hearing.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Advisory Board on Physical Therapy

NOTE: CHANGE IN MEETING DATE

November 20, 1992 - 9 a.m. - Open Meeting
Brookfield Centre, 6606 West Broad Street, Richmond, Virginia.

A meeting to (i) review the regulations, (ii) elect officers, (iii) review the licensure examinations, and (iv) receive other reports relating to the practice of physical therapy.

The Chairperson may entertain public comments at her pleasure.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Advisory Committee on Physician's Assistants

November 6, 1992 - 10 a.m. - Open Meeting
Brookfield Centre, 6606 West Broad Street, Richmond, Virginia.

A meeting to review the regulations and adopt new regulations for prescriptive authority to prescribe certain Schedule VI controlled substances and devices. The Chairman may entertain public comments at his pleasure.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (BOARD OF)

October 27, 1992 - 8 p.m. - Open Meeting
October 28, 1992 - 9 a.m. - Open Meeting
Northern Virginia Training Center, Falls, Church, Virginia. ☐

A regular monthly meeting. An informal session will be held at 8 p.m. on October 27. Committee meetings begin at 9 a.m. on October 28 and the regular session begins at 10 a.m. The agenda will be published on October 21 and may be obtained by calling Jane Helfrich.

Contact: Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

State Human Rights Committee

November 6, 1992 - 9 a.m. - Open Meeting
Madison Building, 109 Governor Street, 13th Floor Conference Room 109 Governor Street, Richmond, Virginia. ☐

A regular meeting of the committee to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Prevention, Promotion Advisory Council

October 22, 1992 - 10 a.m. - Open Meeting
Madison Building, Eighth Floor Conference Room, Richmond, Virginia.

A regularly scheduled business meeting.

Contact: Harriet Russell, Director, Office of Prevention,

Calendar of Events

Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530 or (804) 371-8977/TDD ☎ .

Virginia Council on Teen Pregnancy Prevention

November 5, 1992 - 10 a.m. – Open Meeting
Blair Building, Conference Room A and B, 8007 Discovery Drive, Richmond, Virginia.

A regularly scheduled business meeting.

Contact: Harriet Russell, Director, Office of Prevention, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530 or (804) 371-8977/TDD ☎ .

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

November 5, 1992 - 7 p.m. – Open Meeting
502 South Main Street No. 4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before it for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., No. 4, Culpeper, VA 22701, telephone (703) 825-4562.

MILK COMMISSION

October 21, 1992 - 10 a.m. – Open Meeting
Ninth Street Office Building, 200-202 North Ninth Street, Suite 1015, Richmond, Virginia. ☒

A commission meeting to discuss routine business and information for the public hearing scheduled at 11 a.m. on the same day.

October 21, 1992 - 11 a.m. – Public Hearing
State Capitol, House Room 1, Capitol Square, Richmond, Virginia. ☒

A public hearing to consider amending Regulation No. 10, paragraph 7(G)(2), of the commission's rules and regulations to more accurately reflect actual delivery costs experienced by licensed distributors as the presumptive delivery costs percentages for various volume delivery categories have not been amended since January 1981.

Contact: Rodney L. Phillips, Administrator, Ninth Street Office Bldg., Suite 1015, Richmond, VA 23219-3402,

telephone (804) 786-2013/TDD ☎

DEPARTMENT OF MOTOR VEHICLES

November 20, 1992 – Written comments may be submitted through 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-60-9202. Salvage Act Regulations.** The proposed regulation is to be used in the administration of the 1992 Salvage Act. The regulation will (i) provide additional definitions; (ii) allow exemptions from certain provisions of the Act under certain circumstances; (iii) furnish additional processing guidelines for individual entities; and (iv) further define departmental examination requirements.

Statutory Authority: § 46.2-203 of the Code of Virginia.

Contact: L. Steve Stupasky, Project Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1939.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

October 24, 1992 - 9 a.m. – Open Meeting
Sheraton Inn, 2350 Seminole Trail, Charlottesville, Virginia. ☒

The meeting will include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the August meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎ .

BOARD OF NURSING

Special Conference Committee

October 19, 1992 - 8:30 a.m. – Open Meeting
Department of Health Professions, Conference Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided by request)

A Special Conference Committee, comprised of three members of the Virginia Board of Nursing, will conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing.

Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

October 23, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-01. Virginia Board of Pharmacy Regulations.** The purpose of the proposed amendments is to promulgate regulations necessary (i) to implement legislation requiring (a) mandatory continuing education, (b) relicensure and regulation of wholesalers, (c) 30-day notification of pharmacy closing, and (ii) to establish and amend all related fees.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911.

October 26, 1992 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☐

A board meeting to (i) adopt final regulations to implement 1992 legislation and enact fee changes, (ii) develop and adopt proposed regulations related to the 1992 biennial review pursuant to the Notice of Intent published September 7, 1992, and (iii) develop responses to public comments received. The board will receive no public comments.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911.

DEPARTMENT OF STATE POLICE

† **December 18, 1992** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-00-01. Public Participation Policy.** This regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantive changes to present regulations.

STATEMENT

Basis: The Administrative Process Act, Article 2, § 9-6.14:7.1 of the Code of Virginia.

Purpose: To promulgate guidelines for receiving input and participation from interested citizens in the development of new regulations or substantive changes to existing regulations.

Substance: This policy sets forth the manner of apprising interested parties of proposed regulations and changes.

Issues: The proposed regulation addresses the issues of compliance with the Virginia Administrative Process Act for the development and promulgation of regulations by the department.

Impact: This policy may affect any person, group, or organization interested in a proposed regulation. The method of communicating the regulation to interested parties is established.

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4, and 54.1-4009 of the Code of Virginia.

Contact: Captain J. P. Henries, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

December 4, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists.** The purpose of the proposed amendments is to adjust fees, insert waiver language, and clarify core course requirements.

Statutory Authority: § 54.1-201 and Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

REAL ESTATE APPRAISER BOARD

December 15, 1992 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

Calendar of Events

BOARD OF REHABILITATIVE SERVICES

† **October 22, 1992 - 10 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville,
Virginia. ☒ (Interpreter for deaf provided upon request)

The board will receive department reports, consider regulatory matters and conduct the regular business of the board.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, (804) 367-0280/TDD ☎ or toll-free 1-800-552-5019/TDD ☎

Finance Committee

† **October 22, 1992 - 9 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville,
Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review monthly financial reports and budgetary projections.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, (804) 367-0280/TDD ☎ or toll-free 1-800-552-5019/TDD ☎

Legislation Committee

† **October 22, 1992 - 9 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville,
Virginia. ☒ (Interpreter for deaf provided upon request)

A General Assembly legislative update.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, (804) 367-0280/TDD ☎ or toll-free 1-800-552-5019/TDD ☎

Program and Evaluation Committee

† **October 22, 1992 - 9 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville,
Virginia. ☒ (Interpreter for deaf provided upon request)

Appropriate program information relative to General Assembly issues.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, (804) 367-0280/TDD ☎ or toll-free 1-800-552-5019/TDD ☎

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

November 20, 1992 - 8:30 a.m. – Open Meeting
December 18, 1992 - 8:30 a.m. – Open Meeting
Tyler Building, Suite 208, Office of Coordinator,

Interdepartmental Regulation, 1603 Santa Rosa Road, Richmond, Virginia. ☒

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

October 23, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-01-49. Aid to Families with Dependent Children (AFDC) Program - Disqualification for Intentional Program Violation.** The proposed regulation will impose a disqualification on an individual determined by court or pursuant to an administrative hearing to have committed an intentional program violation in the AFDC program.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted through October 23, 1992, to Mr. George Sheer, Chief, Bureau of Fraud and Special Investigations, 8007 Discovery Drive, Richmond, VA 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF TAXATION

October 21, 1992 - 9 a.m. – Open Meeting
Virginia Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

In conjunction with 1992 Senate Joint Resolution No. 70 this is an informal meeting to solicit comments and suggestions on developing procedures for notifying citizens in the Commonwealth of their eligibility for the federal earned income tax credit.

Contact: Lonnie T. Lewis, Jr., Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0962.

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† **December 1, 1992 - 10 a.m.** – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond,

Virginia.

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-442. Consolidated and Combined Returns.** The purpose of the proposed regulation is to provide guidance to filers of consolidated and combined Virginia tax returns in computing the Virginia modification to the federal N.O.L. and other areas.

STATEMENT

Basis: These regulations are issued under the authority granted by Virginia Code § 58.1-203.

In Chapter 619 of the 1990 Acts of Assembly (HB 159), the Virginia General Assembly overrode the department's regulation prohibiting the inclusion of corporations required to use different apportionment factors in a single consolidated Virginia return. A portion of this regulation provides additional guidance in this area.

Purpose: This regulation sets forth guidance and explains the procedures relating to: computing federal taxable income for Virginia income tax purposes, computing the Virginia modification to the federal net operating loss for combined and consolidated return filers, Virginia income tax treatment of an election under Internal Revenue Code § 338(h)(10), and the computation of a consolidated apportionment factor for affiliated groups with different apportionment factors.

Issues: Although regulations exist for computing the Virginia modification to federal net operating losses under existing law, the Virginia modification required for combined Virginia income tax return filers sometimes resulted in anomalous results. Working in conjunction with various individuals and industry groups (such as the Virginia Manufacturer's Association), a new method was devised. The Virginia modification required for consolidated return filers remains the same as under the previous regulation, but is clarified with examples.

An election under Internal Revenue Code § 338(h)(10) can result in a distortion of Virginia taxable income in the year of the sale of the target company's stock. Therefore, regulatory guidance is required in this area, to enhance the department's existing policy.

This amendment also incorporates several policy clarifications that have been issued in ruling letters since this regulation was promulgated January 1, 1985.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880,

Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

† **December 1, 1992 - 10 a.m.** – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond, Virginia. ☐

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-446. Intragroup Transactions and VR 630-3-446. Corporation Income Tax: Foreign Sales Corporations.** The purpose of this amendment is to clarify and provide guidance for the Virginia tax treatment of transactions between members of a corporate group.

STATEMENT

Basis: These regulations are issued under the authority granted by Virginia Code § 58.1-203.

Purpose: This regulation sets forth guidance and explains the procedures relating to the Virginia tax treatment of transactions between related corporate entities.

Issues: Although current regulations provide guidance in this area, they do not adequately address all of the possible instances in which transactions between related corporate entities may be structured such that income from business done in Virginia is distorted.

Substance: The existence of one or more of the six noninclusive factors listed create a rebuttable presumption that income from business done in Virginia is distorted. These factors are listed to determine that the transactions at issue have economic substance.

If a taxpayer's transaction is found to distort income from business done in Virginia, several remedies are included: income reattribution, expense reattribution, and a consolidated return filing requirement. A look back rule is provided with regard to contributions of property between affiliated corporations.

A number of safeharbor transactions are provided. Transactions substantially like the listed safeharbors are deemed to not distort income from business done in Virginia.

Taxpayers may request permission from the department to have this regulation applied to their transactions.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

Calendar of Events

BOARD OF VETERINARY MEDICINE

† November 2, 1992 - 9:30 a.m. - Open Meeting
Holiday Inn - Oceanfront, 39th and Oceanfront, The
Croatan Room, Virginia Beach, Virginia. ☒ (Interpreter for
deaf provided upon request)

A formal hearing and informal conference.

Contact: Terri H. Behr, Administrative Assistant, 1601
Rolling Hills Dr., Richmond, VA 23229-5005, telephone
(804) 662-9915.

VIRGINIA RACING COMMISSION

† November 18, 1992 - 9:30 a.m. - Open Meeting
VSRS Building, 1200 East Main Street, Richmond, Virginia.
☒

A regular commission meeting including a review of
the racing meeting at Morven Park.

Contact: William H. Anderson, Policy Analyst, Virginia
Racing Commission, P.O. Box 1123, Richmond, VA 23208,
telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

November 10, 1992 - 9 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Suite 707,
Conference Room A, Richmond, Virginia.

The board will meet to approve minutes of the
meeting of October 13, 1992, to review the authority's
operations for the prior months, and to consider other
matters and take other actions as it may deem
appropriate. The planned agenda of the meeting will
be available at the offices of the authority one week
prior to the date of the meeting. Public comments will
be received at the beginning of the meeting.

Contact: Mr. Shockley D. Gardner, Jr., 909 E. Main St.,
Suite 707, Mutual Bldg., Richmond, VA 23219, telephone
(804) 644-3100 or FAX (804) 644-3109.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

November 11, 1992 - 8:30 a.m. - Open Meeting
November 12, 1992 - 8:30 a.m. - Open Meeting
Sheraton Inn Fredericksburg, I-95 and Rt. 3 (Exit 130B).

Wednesday, Nov. 11

8:30 a.m. Orientation meeting for on-site visits
9:30 a.m. On-site visits to vocational education and
occupational-technical education sites in the area
2:30 p.m. General session
3:30 p.m. Committee meetings

Thursday, Nov. 12

8:30 a.m. Business session
Noon - Adjournment

Contact: Jerry M. Hicks, Executive Director, Virginia
Council on Vocational Education, 7420-A Whitepine Rd.,
Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

† December 3, 1992 - 10 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor
Conference Room, Richmond, Virginia.

The purpose of this hearing is to consider the
proposed adoption and issuance of revisions to the
Virginia Voluntary Formulary. The proposed revisions
to the Formulary add and delete drugs and drug
products to the Formulary that became effective on
February 1, 1992, and the most recent supplement to
that Formulary. Copies of the proposed revisions to
the Formulary are available for inspection at the
Virginia Department of Health, Bureau of Pharmacy
Services, James Madison Building, 109 Governor Street,
Richmond, Virginia 23219. Written comments sent to
the above address and received prior to 5 p.m. on
December 3, 1992, will be made a part of the hearing
record.

Contact: James K. Thomson, Director, Bureau of
Pharmacy Services, 109 Governor St., Room B 1-9,
Richmond, VA 23219, telephone (804) 786-4326.

† January 14, 1993 - 10:30 a.m. - Open Meeting
1100 Bank Street, Washington Building, 2nd Floor Board
Room, Richmond, Virginia.

A meeting to consider public hearing comments and
review new product data for products pertaining to
the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of
Pharmacy Services, 109 Governor St., Room B 1-9,
Richmond, VA 23219, telephone (804) 786-4326.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

October 22, 1992 - 10 a.m. - Open Meeting
General Assembly Building, House Room C, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

The department is holding an informational meeting
on the proposed amendments to the Infectious Waste
Management Regulations (VR 672-40-01).

Contact: Murphy P. Murphy, Environmental Program
Manager, 11th Floor, Monroe Bldg., 101 N. 14th St.,

Calendar of Events

Richmond, VA 23219, telephone (804) 371-0044 or (804) 371-8737/TDD ☎

November 5, 1992 - 7 p.m. — Public Hearing
Human Resource Building, County Court House, Board Room, Lunenburg, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), permitting of solid waste management facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for a sanitary landfill to be located on State Route 659 approximately one mile west of State Route 635. The permit was drafted by the Department of Waste Management for Lunenburg County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until November 16, 1992. Comments concerning the draft permit and copies of the draft permit may be obtained by writing to the contact person.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 12, 1992 - 7 p.m. — Public Hearing
Grissom Library, 366 Deshazo Drive, Newport News, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), permitting of solid waste management facilities, the Department of Waste Management will hold a public hearing on the draft permit amendment for sanitary Landfill No. 2 located on Warwick Boulevard, approximately one mile north of Denbeigh Boulevard. The permit amendment was drafted by the Department of Waste Management for the City of Newport News, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the amended issues. The public comment period will extend until November 23, 1992. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor Monroe Bldg., 101 N. 14th St., Richmond, VA 23219. Copies of the proposed draft permit may be obtained from the contact person listed below.

Contact: Paul Farrell, Environmental Engineer Sr., Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0521.

† November 19, 1992 - 7 p.m. — Public Hearing
War Memorial Building, Lord Fairfax Room, 101 East Cork

Street, Winchester, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit amendment for an Industrial Landfill located on Abex Corporation property at approximately 3,000 feet west of interstate 81 in Winchester. The permit amendment was drafted by the department for Abex Corporation, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the draft permit. The public comment period will extend until November 30, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

† November 23, 1992 - 7 p.m. — Public Hearing
Department of Public Utility, Operation Conference Room, 10401 Woodman Road, Glen Allen, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for expansion of Springfield Road Sanitary Landfill located on the north western portion of Henrico County. The permit was drafted by the department for Henrico County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the permit. The public comment period will extend until 5 p.m., December 3, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

† November 24, 1992 - 7 p.m. — Public Hearing
General District Court Room, County Court House, Spotsylvania, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the

Calendar of Events

department will hold a public hearing on the draft permit for expansion of Sanitary Landfill located on State Route 602 east of State Route 208 approximately three miles southeast of Brokenburg. The permit was drafted by the department for Spotsylvania County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 4, 1992. Copies of the proposed draft permit may be obtained from Brian McReynolds, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Brian McReynolds, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

† **December 1, 1992 - 7 p.m.** – Public Hearing
City of Roanoke, Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for a solid waste transfer station located on Hollins Road, south of Orange Avenue and within the corporate limits of the City of Roanoke, Virginia. The permit was drafted by the department for Roanoke Valley Resources Authority, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 11, 1992. Copies of the proposed draft permit may be obtained from Paul Farrell, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Paul Farrell, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

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† **December 21, 1992 - 11 a.m.** – Public Hearing
Department of Waste Management, 101 North 14th Street, 11th Floor, Monroe Building, Richmond, Virginia.

December 21, 1992 – Written comments may be submitted

until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials (Amendment 11)**. The purpose of this proposed amendment is to incorporate by reference changes that were made by U.S. DOT Title 49, Code of Federal Regulations from July 1, 1992, to June 1, 1992.

STATEMENT

Basis and authority: Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia directs the Virginia Waste Management Board to promulgate rules and regulations concerning the transportation of hazardous materials in the Commonwealth. These requirements are to be no more restrictive than applicable federal laws and regulations. Changes in the federal regulations promulgated from July 1, 1992, through June 1, 1992, necessitate an amendment to keep the Virginia Regulations Governing the Transportation of Hazardous Materials consistent with these regulations.

Purpose: The Virginia Waste Management Board promulgates these amended regulations in order to ensure that hazardous materials transported within the Commonwealth are loaded, packed, identified, marked, and placarded in order to protect public health and safety and the environment.

Impact: These requirements have already been through the federal rulemaking process and are in force in the interstate, and some intrastate, transport of hazardous materials. For this reason and reasons outlined in the summary of the regulation, this amendment is not expected to have a significant impact on the regulated community.

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

Written comments may be submitted until 5 p.m., December 21, 1992, to John E. Fly, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761.

* * * * *

† **December 21, 1992 - 10 a.m.** – Open Meeting
Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. ☐

An informational meeting will be held for Amendment 11 to the Virginia Regulations Governing the Transportation of Hazardous Materials. The proposed amendment will incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal Regulations from July 1, 1991, to July 1, 1992.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761 or (804) 371-8737/TDD ☎

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **October 22, 1992 - 9 a.m.** – Open Meeting
The Academy for Staff Development, 500 North Winchester, Waynesboro, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

STATE WATER CONTROL BOARD

October 19, 1992 - 1 p.m. – Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ☒

October 21, 1992 - 7 p.m. – Open Meeting
Tidewater Regional Office, 287 Pembroke Office Park, Suite 310, Pembroke 5, Virginia Beach, Virginia.

October 23, 1992 - 1 p.m. – Open Meeting
County of Prince William Board Chambers, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

October 26, 1992 - 10 a.m. – Open Meeting
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

November 4, 1992 - 10 a.m. – Open Meeting
Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

November 6, 1992 - 9 a.m. – Open Meeting
University of Virginia, Southwest Center, Classroom 1, Highway 19 N., Abingdon, Virginia.

A meeting to receive views and comments and answer questions of the public regarding VR 680-21-00 Water Quality Standards.

Contact: Eleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804)

527-5091.

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† **December 9, 1992 - 7 p.m.** – Public Hearing
University of Virginia Southwest Center, Highway 19 North, Abingdon, Virginia.

† **December 10, 1992 - 11 a.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

† **December 10, 1992 - 7 p.m.** – Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

† **December 14, 1992 - 7 p.m.** – Public Hearing
Prince William County Complex, Board Room, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

† **December 16, 1992 - 2 p.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Glen Allen, Virginia.

† **December 17, 1992 - 1 p.m.** – Public Hearing
Virginia Beach City Council Chambers, City Hall, Courthouse Drive, Virginia Beach, Virginia.

† **December 30, 1992** – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-01-01. Fees for Permits and Certificates.** The purpose of the proposed regulation is to establish a fee assessment and collection system to recover a portion of costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue.

STATEMENT

Basis and Statutory Authority: Section 62.1-44.15:6 of Article 2.1 of the State Water Control Law requires that the State Water Control Board promulgate regulations to establish a fee assessment and collection system to recover a portion of the board's, the Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with processing an application to issue, reissue, or modify a permit or certificate which the board has the authority to issue.

Purpose and substance: The purpose of this proposed regulation is to (i) establish fee schedules that are based on the time and complexity associated with processing various categories of permits and are within maximum amounts specified in § 62.1-44.15:6 and (ii) specify the method that will be used to collect such fees. The legislation which added this article to the State Water

Calendar of Events

Control Law was enacted by the 1992 General Assembly and mandates that the State Water Control Board develop regulations for a fee assessment and collection system.

Impact: All persons who currently or in the future are issued permits and certificates by the State Water Control Board will be affected by this regulation. There are presently approximately 2,000 individual VPDES permits, 1,000 VPDES general permit registrations, and 2,000 VPA permits. Approximately 2,000 Virginia Water Protection permits are processed annually. At least 300 ground water withdrawers will also be affected. No estimate is available for Surface Water Withdrawal Permits and Certificates as none have been issued.

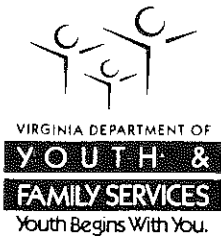
Fee revenue will enable the agency to process permit applications in an efficient and expeditious manner by providing the resources needed to hire additional staff to prepare permits required by federal and state law which are growing in both numbers and complexity.

Issues: Public participation to date has elicited the following issues: the need for an equitable method for setting fees for permit modifications and concern that agency initiated modifications might be used as a way of generating additional revenue.

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on Monday, December 30, 1992, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5166.



DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

October 22, 1992 - 9 a.m. – Open Meeting
Koger Center, Nelson Building, Suite 211, 1503 Santa Rosa Road, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A general business meeting to effect the Comprehensive Services Act for At-Risk Youth and Families. Please confirm meeting details before planning to attend.

Contact: Dian McConnell, Director, Council on Community Services for Youth and Families, Department of Youth and Families, 700 Centre, 4th Floor, Richmond, VA 23219, telephone (804) 371-0771.

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **October 27, 1992 - 9:30 a.m. – Open Meeting**
General Assembly Building, House Appropriations Committee Room, 9th Floor, Richmond, Virginia. ☒

There will be a staff briefing of the findings from the JLARC study of the Virginia Administrative Process Act (VAPA). The JLARC subcommittee on VAPA is scheduled to meet following the conclusion of the full commission meeting. HJR 397

Contact: Bob Rotz, Suite 1100, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-1258.

BLUE RIDGE ECONOMIC DEVELOPMENT COMMISSION

† **November 10, 1992 - 10 a.m. – Open Meeting**
Dabney S. Lancaster Community College, Clifton Forge, Virginia.

Work session. HJR 107.

Contact: Edie T. Conley, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING USES OF CAMP PENDLETON

October 26, 1992 - 8:30 a.m. – Public Hearing
Building 427, Camp Pendleton, Virginia Beach, Virginia.

Subcommittee will have hearing followed by tour of property. (HJR 83)

Contact: Jeffrey F. Sharp, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

October 20, 1992 - 3 p.m. – Open Meeting
October 21, 1992 - 9:30 a.m. – Open Meeting
October 22, 1992 - 9:30 a.m. – Open Meeting
Ramada Oceanside Conference Center, 57th Street and

Oceanfront, Virginia Beach, Virginia.

The Commission will continue with its discussion of competitive negotiable bidding for the Code of Virginia and a proposed code of administrative regulations, complete its revision of Title 24.1, and conduct other general business.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NEEDS OF FOREIGN-BORN RESIDENTS IN THE COMMONWEALTH

† **November 24, 1992 - 10 a.m. - Open Meeting**
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The subcommittee will meet for a work session. HJR 97

Contact: Gayle Nowell, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

DR. MARTIN LUTHER KING JR. MEMORIAL COMMISSION

October 22, 1992 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☒

The subcommittee will meet for the purpose of a work session. (HB 995 - Chapter 741 of the 1992 Acts of Assembly)

Contact: Brenda Edwards, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GENERAL LAWS STUDYING THE DESIRABILITY OF LEGALIZING RIVERBOAT GAMBLING

† **October 28, 1992 - 1 p.m. - Public Hearing**
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

A meeting will be held in order to receive public comments regarding the desirability of legalizing riverboat gambling in the Commonwealth and the methods of implementing any such gambling operations. HJR 221

Contact: Lois V. Johnson, House of Delegates, Committee Operations, General Assembly Bldg., 910 Capitol St.,

Richmond, VA 23219; or Maria J.K. Everett, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING PROCESSING TIMES FOR WORKERS' COMPENSATION CLAIMS

† **October 29, 1992 - 5:30 p.m. - Open Meeting**
Central Virginia Community College, Auditorium, Room 2123, Lynchburg, Virginia.

Joint subcommittee studying processing times associated with claims received, managed, and adjudicated by the Department of Workers' Compensation will meet. SJR 54

Contact: Thomas C. Gilman, Senate of Virginia, P.O. Box 396, Richmond, VA, telephone (804) 786-3838; or Mark C. Pratt, Research Associate, Division of Legislative Services, 2nd Floor, General Assembly Bldg., 910 Capitol St., Richmond, VA 23208, telephone (804) 786-3591.

VIRGINIA COMMISSION ON YOUTH

October 21, 1992 - 1 p.m. - Public Hearing
Burruss Hall, Auditorium, Virginia Polytechnic Institute and State University, Field Drive, Blacksburg, Virginia. ☒
(Interpreter for deaf provided upon request)

This is a public hearing to solicit testimony relating to Juvenile Crime and Youth Prevention Programs. The Juvenile Crime testimony will be used as part of the study from HJR 36 on Serious Juvenile Offenders and the Youth Prevention Programs testimony will be used as background for the oversight of the Comprehensive Services Act for At-Risk Youth and Families (HB 935 and SB 171). A separate time slot has been set aside for each topic.

Juvenile Crime - 1 p.m. through 3 p.m.
Youth Prevention Programs - 4 p.m. through 6 p.m.

Contact: Nancy Ross, Executive Director, Commission on Youth, General Assembly Bldg., 910 Capitol St., Suite 517B, Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

October 19

† Disability Services Council
Emergency Planning Committee, Local - Prince William County, Manassas City, and Manassas Park City
Fuels Tax Evasion, Governor's Task Force on

Calendar of Events

Intergovernmental Relations, Advisory Commission on
Cosmetology, Board for
Nursing, Board of
Water Control Board, State

October 20

† Auctioneers Board
Aviation Board, Virginia
Code Commission, Virginia
Health Professions, Board of
Housing Development Authority, Virginia

October 21

Code Commission, Virginia
Conservation and Recreation, Board of
Corrections, Board of
† Emergency Planning Committee - Goochland County
† Forestry, Board of
Governor's Commission on Violent Crime
- Inmate Productivity Subcommittee
Historic Resources, Department of
- Board of Historic Resources and State Review
Board
† Housing and Community Development, Department
of
- Amusement Device Technical Advisory Committee
Milk Commission
Taxation, Department of
Virginia Employment Commission
- State Advisory Board
Water Control Board, State

October 22

† Agriculture and Consumer Services, Department of
- Virginia Farmers' Market Board
Audiology and Speech-Language Pathology, Board of
Dr. Martin Luther King Jr. Memorial Commission
† Information Management, Council on
- Advisory Committee on Mapping, Surveying and
Land Information Systems
Mental Health, Mental Retardation and Substance
Abuse Services, Department of (State Board)
- Prevention, Promotion Advisory Council
Code Commission, Virginia
† Rehabilitative Services, Board of
- Finance Committee
- Legislation Committee
- Program and Evaluation Committee
Virginia Public Procurement Act, Joint Subcommittee
Studying
Waste Management, Department of (Virginia Waste
Management Board)
† Waste Management Facility Operators, Board for
Youth and Family Services, Department of
- State Management Team of the Comprehensive
Services Act for At-Risk Youth and Families

October 23

Water Control Board, State

October 24

Mary Washington College
- Board of Visitors
Museum of Natural History, Virginia
- Board of Trustees

October 26

Accountancy, Board for
Alcoholic Beverage Control Board
Commerce, Board of
† Health, Board of
† Longwood College
- Board of Visitors
Lottery Board, State
Pharmacy, Board of
Water Control Board, State

October 27

Accountancy, Board for
† Audit and Review Commission, Joint Legislative
† Health, Board of
Health Services Cost Review Council, Virginia
Marine Resources Commission
Mental Health, Mental Retardation and Substance
Abuse Services Board, State

October 28

† Emergency Planning Committee, Local - Gloucester
Mental Health, Mental Retardation and Substance
Abuse Services Board, State

October 29

† Aging, Governor's Advisory Board on
Chesapeake Bay Local Assistance Board
† Disability Services Council
Education, Board of
Emergency Response Council, Virginia
† Workers' Compensation Claims, Joint Subcommittee
Studying Processing Times for

October 30

† Aging, Governor's Advisory Board on
† Air Pollution Control Board, State
† Medical Assistance Services, Department of
- Drug Prior Authorization Advisory Panel

November 2

† Veterinary Medicine, Board of

November 3

Hopewell Industrial Safety Council

November 4

Water Control Board, State

November 5

Emergency Planning Committee, Local - Chesterfield
County
Medical Assistance Services, Department of
- Drug Utilization Review (DUR) Board
Mental Health, Mental Retardation and Substance
Abuse Services, Department of (State Board)

Calendar of Events

- Council on Teen Pregnancy Prevention
Middle Virginia Board of Directors and the Middle
Virginia Community Corrections Resources Board

November 6

Medicine, Board of
- Advisory Committee on Physician's Assistant
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee
Water Control Board, State

November 9

† Information Management, Council on

November 10

† Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
† Blue Ridge Economic Development Commission
Virginia Resources Authority

November 11

Vocational Education, Virginia Council on

November 12

† Library Board
Vocational Education, Virginia Council on

November 18

† Corrections, Board of
† Virginia Racing Commission

November 19

† Corrections, Board of
- Liaison Committee

November 20

Medicine, Board of
- Advisory Board of Physical Therapy
Residential Facilities for Children, Interdepartmental
Regulation of
- Coordinating Committee

November 21

† Dentistry, Board of

November 23

Cosmetology, Board for
Lottery Board, State

November 24

Education, Board of
† Foreign-born Residents in the Commonwealth, Joint
Subcommittee Studying the Needs of
Health Services Cost Review Council, Virginia

December 1

† Aging, Department for the
- Long-Term Care Ombudsman Program Advisory
Council
Hopewell Industrial Safety Council

December 3

Chesapeake Bay Local Assistance Board
Emergency Planning Committee, Local - Chesterfield
County

† Medicine, Board of

- Joint Advisory Committees on Acupuncture

December 15

Real Estate Appraiser Board

December 18

Residential Facilities for Children, Interdepartmental
Regulation of
- Coordinating Committee

December 21

† Waste Management, Department of (Virginia Waste
Management Board)

January 14, 1993

† Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

October 21

Milk Commission
Youth, Virginia Commission on

October 22

Health, State Board of

October 26

Uses of Camp Pendleton, Joint Subcommittee Studying

October 27

Health, State Board of

October 28

Alcoholic Beverage Control, Board of
† Riverboat Gambling, Desirability of Legalizing,
Subcommittee of the House Committee on General
Laws Studying the

November 5

Waste Management, Department of (Virginia Waste
Management Board)

November 12

Waste Management, Department of (Virginia Waste
Management Board)

November 18

Corrections, Department of (State Board)

November 19

† Waste Management, Department of

Calendar of Events

November 23

† Waste Management, Department of

November 24

Health Services Cost Review Council, Virginia

† Waste Management, Department of

December 1

† Taxation, Department of

† Waste Management, Department of

December 3

† Voluntary Formulary Board, Virginia

December 9

† Water Control Board, State

December 10

† Water Control Board, State

December 14

† Water Control Board, State

December 16

† Water Control Board, State

December 17

† Water Control Board, State

December 21

† Waste Management, Department of (Virginia Waste Management Board)