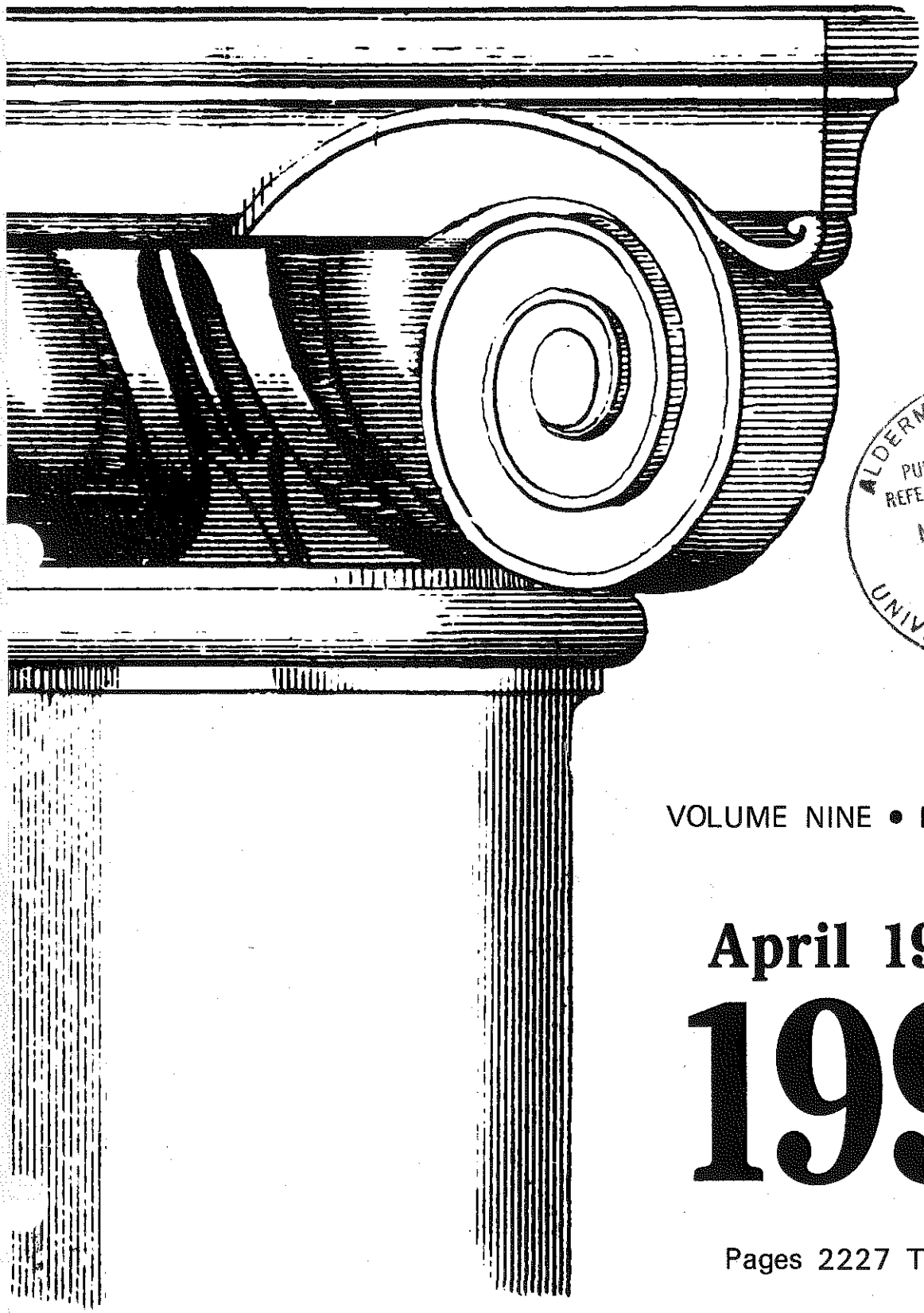
THE VIRGINIA REGISTER

OF REGULATIONS



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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.

CITATION TO THE VIRGINIA REGISTER

The Virginia Register is cited by volume, issue, page number, and date. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

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VIRGINIA REGISTER OF REGULATIONS

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January 1993 through April 1994

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Jan. 20	Feb. 8
Feb. 3	Feb. 22
Feb. 17	Mar. 8
Mar. 3	Mar. 22
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† 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 promulgating regulations entitled: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions through Enhanced Testing.** The purpose of the proposed action is to promulgate a regulation to conform to the federal requirements for control of emissions from motor vehicles.

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 May 19, 1993, 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 May 3, 1993, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants by May 12, 1993. If you are selected to be on the group, you are encouraged to attend the public meeting on May 19, 1993, 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. The first meeting of this group will be at 2:30 p.m. on May 19 at the Pohick Regional Library, 6450 Sydenstriker Road, Burke, Virginia.

Public hearing plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA standard the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act Amendments (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard to the detriment of public health and welfare, (ii) may result in assumption of the control program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as prohibition of new major industrial facilities and loss of federal funds for sewage treatment plant development and highway construction. Although the EPA has been reluctant to impose these sanctions in the past, the Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an adequate program to control ozone concentrations in the ambient air, the most serious consequence will be the adverse impact on public health and welfare. A growing body of scientific data indicates that health and welfare effects associated with ozone are more serious than envisioned in the late 1970s. Some scientists believe that existing air quality standards may provide little or no margin of safety. Perhaps the most significant new finding is that ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and lung congestion and inflammation when healthy adults are exercising, and more serious effects in the young, old, and infirmed. Recent EPA estimates suggest there are 20 to 30 million ozone-sensitive people in those major urban areas where levels are 25% (0.150 ppm) or more above the current health standard. The Northern Virginia Nonattainment Area is one of those major urban areas with ozone levels of up to 0.165 ppm. Equally high levels of ozone are often recorded in rural sectors downwind from these metropolitan areas.

Northern Virginia has an ozone air pollution problem classified by the EPA as "serious." The problem originates in large part from motor vehicle emissions. A vehicle emissions inspection (I/M) program has been in place in

Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required and a more effective I/M program must be implemented in the Northern Virginia area.

I/M programs provide a way to check whether the emission control system on a vehicle is working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. I/M is designed to ensure that vehicles stay clean in actual use. Through periodic vehicle checks and required repair of vehicles that fail the test, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices. This, in turn, can substantially reduce the amount of volatile organic compounds and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Draft new regulations which will provide for implementation of a motor vehicle emissions testing program that meets the provisions of the federal Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. No alternatives have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.

3. Take no action to amend the regulations and continue to operate the existing program in violation of the Act and risk sanctions by EPA.

Costs and benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable federal requirements: The 1990 amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted and for the first time delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classification of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are classified as marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Section 182(c) (3) of the federal Act requires "enhanced" I/M programs in all urbanized areas with 1980 populations of 200,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas. In addition, the Act created ozone transport regions (OTR) and specifically established one such region in the Northeastern United States, covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area of the District of Columbia, which includes Northern Virginia. The Act requires an enhanced I/M program in any metropolitan statistical area (MSA) or portion of a MSA within the OTR with a 1990 population of 100,000 or more, regardless of its nonattainment status.

The enhanced model program is based on annual, centralized testing of all model year 1968 and later light-duty vehicles and light-duty trucks to 8,500 pounds gross vehicle weight rating. Steady state testing is performed on 1968 through 1985 model year vehicles, while 1986 and later model year vehicles are subject to transient tailpipe emission testing. Also required is a test of the vapor recovery effectiveness of the fuel system and charcoal canister operation.

EPA regulations require that enhanced programs include a test-only network to achieve the performance standard. EPA does encourage biennial testing as a cost effective alternative to annual testing but the resulting difference in emissions control must be made up by further enhancements to the program.

At a minimum, the program must include computerized emission analyzers, on-road testing, denial of waivers for warranted vehicles or repairs related to tampering, a $450 cost waiver requirement for emission-related repairs not covered by manufacturer's warranty, enforcement through vehicle registration denial, and inspection of the emissions control diagnostic system. In addition, each state must report biennially to EPA on emissions reductions achieved by the program.

An enhanced I/M program must be implemented by January 1, 1995. Areas switching from a test-and-repair to a test-only network may phase in the change between January 1995 and January 1996.

The General Assembly of Virginia passed legislation providing for a biennial, test-only enhanced emission inspection program which will become effective January 1, 1995. The program will apply to motor vehicles that have actual gross weights of 26,000 pounds or less. The new legislation also provides for regulations to address the protection of the following consumer interests in accordance with EPA requirements: (i) the number of inspection facilities and inspection lanes relative to population density, (ii) the proximity of inspection facilities to motor vehicle owners, (iii) the time spent waiting for inspections, and (iv) the days and hours of operation of inspection facilities. Other key provisions of the legislation include:

Beginning January 1, 1995, an inspection fee cap of $20 and a minimum repair cost of $450 to qualify for a waiver;

Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection;

Vehicle held for resale by dealers, up to five years old, will not be required to have an inspection the first year, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's warranty at the time of resale; and

The requirement for the inspection to apply to all vehicles registered or operated in the affected area including (i) vehicles owned by government entities, (ii) vehicles owned by military personnel residing in the affected areas, and (iii) vehicles owned by leasing or rental companies.

The legislation directs the State Air Pollution Control Board to adopt regulations to implement the program. Federal law requires that regulations be adopted and submitted to EPA by November 15, 1993.

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Written comments may be submitted until the close of business on May 19, 1993, to the Director of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: David Kinsey, Policy Analyst, Division of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1620.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to make changes to the minimum standards of practice and conduct and make other changes as needed.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

BOARD FOR BRANCH PILOTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider amending regulations entitled: **VR 535-01-01. Branch Pilot Regulations.** The purpose of the proposed action is to make (i) changes to the requirements for license renewal; (ii) changes requiring ARPA radar training, and (iii) other changes as needed.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 367-8514.

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 promulgating regulations entitled: **Rules and Regulations Governing Emergency Medical Services Do Not Resuscitate Program.** The purpose of the proposed action is to promulgate permanent regulations for the Emergency Medical Services Do Not Resuscitate Program to replace emergency regulations currently in effect.

Statutory Authority: §§ 32.1-151, 32.1-153, and 54.1-2987.1 of the Code of Virginia.

Written comments may be submitted until April 20, 1993.

Contact: Susan D. McHenry, Director, Office of Emergency Medical Services, Virginia Department of Health, 1538 East Parham Road, Richmond, VA 23228, telephone (804) 371-3500 or toll-free 1-800-523-6019.

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 amend regulations entitled: **VR 355-33-100 (formerly VR 355-33-01). Regulations for the Licensure of Nursing Homes.** The purpose of the proposed action is to amend the current regulations to incorporate additional state and federal requirements.

Statutory Authority: § 32.1-127 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Deborah Little-Spurlock, Director, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 371-2102.

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 amend regulations entitled: **VR 355-33-500. Regulations for the Licensure of Hospitals.** The purpose of the proposed action is to amend the current regulations to incorporate additional requirements contained within the Code of Virginia.

Statutory Authority: § 32.1-127 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Deborah Little-Spurlock, Director, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 371-2102.

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 394-01-2. Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 15.1-11.4, 36-98.3, 36-137, and 27-97 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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 amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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 394-01-6. Virginia Statewide Fire Prevention Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

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

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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 394-01-21. Virginia Uniform Statewide Building Code - Vol. I - New Construction Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

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

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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 394-01-22. Virginia Uniform Statewide Building Code - Vol. II - Building Maintenance Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

VIRGINIA MANUFACTURED HOUSING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactured Housing Board intends to consider promulgating regulations entitled: **VR 449-01-01. Public Participation Guidelines for Formation, Promulgation and Adoption of Regulations.** The purpose of the proposed action is to develop permanent public participation guidelines to replace the public participation guidelines adopted as emergency regulations.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactured Housing Board intends to consider promulgating regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to develop regulations to be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

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 460-04-8.9. Public Participation Guidelines in the Formation and Development of Regulations.** The purpose of the proposed action is to amend the agency's Public Participation Guidelines to conform with changes to the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-325 of the Code of Virginia.

Written comments may be submitted until April 26, 1993, to Roberta Jonas, 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.

† 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 460-03-4.1940:1. Nursing Home Payment System.** The purpose of the proposed action is to clarify the treatment and limitations of balloon-loan financing and refinancing for nursing facilities.

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

Written comments may be submitted until May 3, 1993, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, 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) 371-8850.

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 465-03-1. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to amend §§ 4.1 B and 8.1 B to more clearly define the traineeship requirements for a license by endorsement and reinstatement of a lapsed license for periods of seven years or more of inactivity in the practice of physical therapy.

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

Written comments may be submitted until May 21, 1993, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 5th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

DEPARTMENT OF MOTOR VEHICLES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider amending regulations entitled: **VR 485-50-7801. Virginia Driver Improvement Act Rules and Regulations.** The purpose of the proposed action is to revise and update regulations relating to Article 19 (§ 46.2-489 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Written comments may be submitted until May 18, 1993, to Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 319, Richmond, Virginia 23269-0001.

Contact: Rena J. Roberts, Driver Improvement Program Manager, Department of Motor Vehicles, 2300 W. Broad Street, Room 311, Richmond, VA 23220, telephone (804) 367-2689.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Optometry intends to consider amending regulations entitled: **VR 510-01-1. Board of Optometry Regulations.** The purpose of the proposed action is to consider amending § 3.1 4 f to define what constitutes a complete contact lens prescription and to adjust fees for initial licensure, examination, and renewal of licensure for optometrists; the fee for professional designation application; and the late fee.

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

Written comments may be submitted until May 10, 1993, to Carol Stamey, Board of Optometry, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Elizabeth A. Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9942.

DEPARTMENT OF STATE POLICE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Back-up Audible Alarm Signals.** The purpose of the proposed action is to establish specifications which define standards and identification for back-up audible alarm signals required on garbage and refuse collection and disposal vehicles, and certain vehicles used primarily for highway repair and maintenance.

Statutory Authority: § 46.2-1175.1 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

† **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** The purpose of the proposed action is to establish specifications which define standards and identification for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

† **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Regrooved or Recut Tires.** The purpose of the proposed action is to establish specifications which define standards for regroovable and regrooved tires and identification of regroovable tires.

Statutory Authority: § 46.2-1042 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

† **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications of the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** The purpose of the proposed action is to establish specifications for lights used in farm tractors in excess of 108 inches in width as required by § 46.2-1102 of the Code of Virginia.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

† **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** The purpose of the proposed action is to establish specifications which define standards for stickers or decals required to be placed on all-terrain vehicles sold by retailers within the Commonwealth.

Statutory Authority: § 46.2-915.1 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

REAL ESTATE BOARD

† **Notice 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 585-01-1. Real Estate Board Regulations.** The purpose of the proposed action is to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees.

Statutory Authority: § 54.1-200 of the Code of Virginia.

Written comments may be submitted until July 1, 1993.

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

DEPARTMENT OF SOCIAL SERVICES (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 Social Services intends to consider promulgating regulations entitled: **Virginia Department of Social Services Administrative Hearing Procedure: Telephone Hearings.** The purpose of the proposed action is to streamline the existing administrative hearing process.

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

Written comments may be submitted until April 30, 1993, to Donna Douglas, Bureau of Customer Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Margaret J. Friedenberg, Regulatory Coordinator,

Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, 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 promulgating regulations entitled: **VR 680-15-04. Shenandoah River Surface Water Management Area (the Shenandoah River, including the Portions of the North Fork Shenandoah River and the South Fork Shenandoah River located within Warren County).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides local governments the right to petition the board for consideration of surface water management areas. The board has received petitions from the Clarke and Warren Counties Board of Supervisors requesting a surface water management area for the Shenandoah River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the Shenandoah River in Clarke County and Warren County for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit. Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the James River in the Richmond metropolitan area. The staff estimates 15 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be more agricultural irrigators who are not currently reporting their use.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Wednesday, May 26, 1993, at the Board of Supervisors Room, Clarke County Administration Office, 102 North Church Street, Berryville, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on June 1, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† 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 promulgating regulations entitled: **VR 680-15-05. North River Surface Water Management Area (The North River and All Its Tributaries Above the Confluent with the Middle River).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides local governments the right to petition the board for consideration of surface water management areas. The board has received a letter from the Town of Bridgewater's attorneys requesting a surface water management area for the North River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the North River in Augusta and Rockingham Counties for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit. Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the North River in the proposed area. The staff estimates 15 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be more agricultural irrigators who are not currently reporting their use.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Thursday, May 20, 1993, at the Rockingham County Administration Office, Board of Supervisors Room, 20 East Gay Street, Harrisonburg, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on May 28, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† 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 promulgating regulations entitled: **VR 680-15-06. James River Surface Water Management Area (The Richmond Metropolitan Area).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides

local governments the right to petition the board for consideration of surface water management areas. The board has received a petition from the Henrico County Board of Supervisors requesting a surface water management area for the James River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the James River in the Richmond metropolitan area for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit. Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the James River in the Richmond metropolitan area. The staff estimates 10 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be some agricultural irrigators who are not currently reporting their use. Some counties are not direct withdrawers but purchase water from a withdrawer and will therefore be impacted, such as Chesterfield, Hanover and Henrico Counties.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Monday, May 24, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on May 28, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† 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 (VR 680-21-07.1 b (Potomac Embayment Standards).** The purpose of the proposed action is to consider amendments to the Potomac Embayment Standards.

Need: The board adopted the Potomac Embayment Standards (PES) in 1971 to address serious nutrient enrichment problems evident in the Virginia embayments and Potomac River at that time. These standards apply to sewage treatment plants discharging into Potomac River embayments in Virginia from Jones Point to the Route 301 bridge and for expansions of existing plants discharging into the nontidal tributaries of these embayments.

Based upon these standards, several hundred million dollars were spent during the 1970s and 1980s upgrading major treatment plants in the City of Alexandria and the Counties of Arlington, Fairfax, Prince William, and

Stafford. Today these localities operate highly sophisticated advanced wastewater treatment plants which have contributed a great deal to the dramatic improvement in the water quality of the upper Potomac estuary.

Even before the planned upgrades at these facilities were completed, questions arose over the high capital and operating costs that would result from meeting all of the requirements contained in the PES. Questions also arose due to the fact that the PES were blanket effluent standards that applied equally to different bodies of water. Therefore, in 1978 the board committed to reevaluate the PES. In 1984, a major milestone was reached when the Virginia Institute of Marine Science (VIMS) completed state-of-the-art models for each of the embayments. The board then selected the Northern Virginia Planning District Commission (NVPDC) to conduct waste load allocation studies of the Virginia embayments using the VIMS models. In 1988, these studies were completed and effluent limits were developed for each major facility that would protect the embayments and the mainstem of the Potomac river. However, the PES were not amended to reflect the results of these efforts.

Since the PES have not been amended or repealed, VPDES permits have included the PES as effluent limits. Since the plants cannot meet all of the requirements of the PES, the plant owners have operated under consent orders or consent decrees with operating effluent limits for the treatment plants that were agreed upon by the owners and the board.

In 1991, several Northern Virginia jurisdictions with embayment treatment plants submitted a petition to the board requesting that the board address the results of the VIMS/NVPDC studies and that the PES be replaced with a descriptive process for establishing effluent limits for these plants to meet water quality standards. The petitioners claimed the current standards do not allow for scientifically based permit limits.

A board staff workgroup was formed to consider the changes to the PES recommended by the petitioners. At their June 1991 meeting, the board authorized holding a public hearing to solicit comments on proposed amendments based upon the recommendations of the work group. These amendments would allow permit-by-permit development of appropriate effluent limits for the affected discharges using the board's Permit Regulation and Water Quality Standards Regulation. They would also apply a total phosphorus effluent limit of 0.18 mg/l which is the regionally agreed limit to protect the embayments and the upper Potomac estuary from nutrient enrichment.

Based upon the request of Fairfax County, a hearing was not scheduled on the proposed amendments so the petitioners could consider revisions to their original petition. By letter dated October 28, 1992, Fairfax County requested the board to proceed with a revised petition to change the PES. The revised petition was supported by the Counties of Arlington, Prince William, and Stafford and the Alexandria Sanitation Authority.

Substance and purpose: The purpose of this proposed regulatory action is to consider amendments to the Potomac Embayment Standards.

Under the recent petition from the Northern Virginia localities for amending the PES, minimum effluent limits are retained in the standards and state-of-the-art modeling is required to be performed for construction of any major new plant or expansion of an existing plant.

Information on the following issues would help the board develop appropriate amendments to the PES:

Adopting the amendments included with the revised petition from the local governments,

Repealing the Potomac Embayment Standards and using the Permit Regulation and Water Quality Standards Regulation to determine effluent limits,

Replacing the standards with a comprehensive policy to protect the Potomac Embayments (similar to the approach used with the Occoquan Policy), and

Coverage of existing small sewage treatment plants and single family home discharges by the Potomac Embayment Standards.

Estimated impact: Amendments to the Potomac Embayment Standards would impact eight major and several smaller sewage treatment plants discharging to the Potomac embayments. Upgrading the existing treatment plants to meet the current standards would cost millions of dollars. The alternatives identified thus far for amending the current standards would result in significant cost savings.

Alternatives: Three alternatives have so far been identified: (i) no change to the current standards; (ii) amend the standards to remove specific effluent limits and rely on the Permit Regulation and Water Quality Standards Regulation (approach previously authorized for hearing by the Board); or (iii) amend the standards by changing the specific effluent limits (local government petition).

Public meeting: The board will hold a public meeting to receive views and comments on the local government petition as well as other comments on amending the Potomac Embayment Standards. The meeting will be held at 7 p.m. on Wednesday, May 19, 1993, Fairfax County Government Center, Conference Center, Rooms 4 and 5, 12000 Government Center Parkway, Fairfax.

Accessibility to persons with disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Doneva A. Dalton at the address listed below or by telephone at (804) 527-5162 or TDD (804) 527- 4261. Persons needing

interpreter services for the deaf must notify Mrs. Dalton no later than Thursday, April 29, 1993.

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

Written comments may be submitted until 4 p.m. on May 24, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Alan E. Pollock, Chesapeake Bay Program, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

For information concerning Proposed Regulations, see information page.

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM – VR 120-01-01, VR 120-01-02, VR 120-08-02).**

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

Public Hearing Date: May 26, 1993 - 10 a.m.

Written comments may be submitted until close of business June 19, 1993.

(See Calendar of Events section for additional information)

Summary:

The regulation amendments concern provisions covering prevention of significant deterioration (PSD) and are summarized below:

1. Definitions are revised to coincide with federal definitions, or to provide more detail.

2. Procedures are revised to coincide with federal procedures.

3. Procedures appropriate to a federally-managed program are revised to reflect a state-managed program.

4. Transition provisions that are no longer applicable are removed.

The amendments are being proposed in § 120-01-02 in Part I (General Definitions) and § 120-08-02 in Part VIII (Permits for Stationary Sources).

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM – VR 120-01-01, VR 120-01-02, VR 120-08-02).

PART I.
GENERAL DEFINITIONS.

§ 120-01-01. General.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 120-01-02.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in these regulations, terms used shall have the meanings commonly ascribed to them by recognized authorities.

C. In addition to the definitions given in this part, some other major divisions (i.e. parts, rules, etc.) of these regulations have within them definitions for use with that specific major division.

§ 120-01-02. Terms defined.

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

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

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

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

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

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

"Air quality control region" means any area designated as such in Appendix B.

"Air quality maintenance area" means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in Part III within a subsequent 10-year period and designated as such in

Appendix H.

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

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

"Ambient air quality standard" means any primary or secondary standard designated as such in Part III.

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

"Class I area" means any prevention of significant deterioration area *(i) in which virtually any deterioration of existing air quality is considered significant and (ii)* designated as such in Appendix L.

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

"Class III area" means any prevention of significant deterioration area *(i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii)* designated as such in Appendix L.

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

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

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

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

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

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under Part III.

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

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

"Department" means any employee or other representative of the Virginia Department of Air Pollution Control, as designated by the executive director.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by

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

2. The preceding sentence does not include:

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

b. The merging of exhaust gas streams where:

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

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

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

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

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

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

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

"Emergency special order" means any order of the board issued under the provisions of § 10.1-1309 B, after declaring a state of emergency and without a hearing, to owners who are permitting or causing air pollution, to cease such pollution. Such orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.

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

"Emission standard" means any provision of Parts IV, V or VI which prescribes an emission limitation, or other requirements that control air pollution emissions.

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

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

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

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

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of § 120-08-02, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of

such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

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

"Executive director" means the executive director of the Virginia Department of Air Pollution Control or his designated representative.

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

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

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

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

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

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under Part VIII,

$$Hg = 2.5H,$$

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

b. For all other stacks,

$$Hg = H + 1.5L,$$

where:

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

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

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

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

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

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

point.

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

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person.

"Metropolitan statistical area" means any area designated as such in Appendix G.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in Appendix K for a particular pollutant and designated as such in Appendix L.

"Proportional sampling" means sampling at a rate that

produces a constant ratio of sampling rate to stack gas flow rate.

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

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

1. For ambient air quality standards in Part III: the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in Parts IV and V: Appendix A of 40 CFR Part 60.

3. For emission standards in Part VI: Appendix B of 40 CFR Part 61.

"Regional director" means the regional director of an administrative region of the Department of Air Pollution Control or his designated representative.

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

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

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

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

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

1. Under the provisions of § 10.1-1309:

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

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

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

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

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

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

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

"Stack in existence" means that the owner had:

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

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

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

"Standard of performance" means any provision of Part V which prescribes an emission limitation or other requirements that control air pollution emissions.

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

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental

Protection Agency, under Section 110 of the federal Clean Air Act, and which implements the requirements of Section 110.

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

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

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see Appendix M). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

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

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

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

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

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

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

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

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (CFC-22);

i. Trifluoromethane (FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a); and

u. Perfluorocarbon compounds which fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of § 120-04-03 or § 120-05-03, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

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

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

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

PART VIII.
PERMITS FOR STATIONARY SOURCES.

§ 120-08-02. Permits - major stationary sources and major modifications locating in prevention of significant deterioration areas.

A. Applicability.

1. The provisions of this section apply to the construction of any major stationary source or major modification.

2. The provisions of this section apply in prevention of significant deterioration areas designated in Appendix L.

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

4. Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new or modified sources" or "stationary sources" are applicable to the construction of all major stationary sources and major modifications.

b. Any emissions units not subject to the provisions of this section may be subject to the provisions of § 120-08-01 or § 120-08-03.

5. Unless otherwise approved by the board or prescribed in these regulations, when this section is amended, the previous provisions of this section shall remain in effect for all applications that are deemed complete under the provisions of subdivision R 1 of this section prior to the effective date of the amended section. Any permit applications that have not been determined to be complete as of the effective date of the amendments shall be subject to the new provisions.

B. Definitions.

1. As used in this section, all words or terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

2. For the purpose of this section, § 120-05-0405 and any related use, the words or terms shall have the meaning given them in subdivision B 3 of this section:

3. Terms defined.

"Actual emissions"

(1) Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions 3a (2) through 3a (4) of this subsection.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or

combusted during the selected time period.

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

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

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

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

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

(1) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) The applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(3) The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

"Baseline area"

(1) Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this section or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

"Baseline concentration"

(1) Means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a *minor source* baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (2);

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

(1) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this section submits a complete application under this section. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(3) The baseline date is established for each pollutant for which increments or other equivalent

measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this section or 40 CFR 52.21; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, as amended by the Supplement (see Appendix M).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

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

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. *Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.*

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or Part VIII, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

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

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the

jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

(2) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by a stationary source which:

1 The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII; or

2 The source is approved to use under any permit issued under 40 CFR 52.21 or Part VIII;

(c) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII.

"Major stationary source"

(1) Means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit,100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

1 Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

2 Coal cleaning plants (with thermal dryers).

3 Kraft pulp mills.

4 Portland cement plants.

5 Primary zinc smelters.

6 Iron and steel mill plants.

7 Primary aluminum ore reduction plants.

8 Primary copper smelters.

9 Municipal incinerators capable of charging more than 250 tons of refuse per day.

10 Hydrofluoric acid plants.

11 Sulfuric acid plants.

12 Nitric acid plants.

13 Petroleum refineries.

14 Lime plants.

15 Phosphate rock processing plants.

16 Coke oven batteries.

17 Sulfur recovery plants.

18 Carbon black plants (furnace process).

19 Primary lead smelters.

20 Fuel conversion plants.

21 Sintering plants.

22 Secondary metal production plants.

23 Chemical process plants.

24 Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

25 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

26 Taconite ore processing plants.

27 Glass fiber processing plants.

28 Charcoal production plants.

(b) Notwithstanding the stationary source size specified in subdivision (1)(a), stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision (1)(a) or (1)(b) as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(i) Hydrofluoric, sulfuric, or nitric acid plants.

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

(z) Fossil fuel-fired steam electric plants of more that 250 million British thermal units per hour heat input.

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

"Net emissions increase"

(1) Means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this section (or the administrator under 40 CFR 52.21), which

permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally and state enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable ; , and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant"

(1) Means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM10	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl Chloride	1 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H2S)	10 tpy
Total Reduced Sulfur (including H2S)	10 tpy
Reduced Sulfur Compounds (including H2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO2 and HCl)	40 tpy

(2) Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision (1) does not list, any emissions rate.

(3) Notwithstanding subdivision (1), means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 ug/m³ (24-hour average).

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

C. General.

1. No owner or other person shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

2. No owner or other person shall relocate any emissions unit subject to the provisions of § 120-02-31 without first obtaining a permit from the board to relocate the unit.

3. Prior to the decision of the board, all permit applications will be subject to a public comment period; a public hearing will be held as provided in subsection R of this section.

4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to §§ 120-08-01, 120-08-02, and 120-08-03 into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by §§ 120-08-01, 120-08-02, and 120-08-03 be combined into one application.

D. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I

Particulate matter:

TSP, annual geometric mean 5

TSP, 24-hour maximum 10

Sulfur dioxide:

Annual arithmetic mean 2

24-hour maximum 5

Three-hour maximum 25

Nitrogen dioxide:

Annual arithmetic mean 2.5

Class II

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hour maximum 37

Sulfur dioxide:

Annual arithmetic mean 20

24-hour maximum 91

Three-hour maximum 512

Nitrogen dioxide:

Annual arithmetic mean 25

Class III

Particulate matter:

TSP, annual geometric mean 37

TSP, 24-hour maximum 75

Sulfur dioxide:

Annual arithmetic mean 40

Twenty-four hour maximum 182

Three-hour maximum 700

Nitrogen dioxide:

Annual arithmetic mean 50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

E. Ambient air ceilings.

No concentration of a pollutant shall exceed:

1. The concentration permitted under the national secondary ambient air quality standard, or

2. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

F. Applications.

1. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

2. For projects with phased development, a single application may be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

(1) The president, secretary, treasurer, or a vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit ot the agency.

4. Any person signing a document under subdivision F 3 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

G. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under § 120-02-14 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

H. Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in subdivision H 2 of this section, compliance with standards of performance shall be determined in accordance with the provisions of § 120-05-02 and shall be verified by performance tests in accordance with the provisions of § 120-05-03.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of § 120-06-02 and shall be verified by emission tests in accordance with the provisions of § 120-06-03.

3. Testing required by subdivisions H 1 and 2 of this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of subdivisions H 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in

subdivision H 4 of this section, the requirements of subdivisions H 1 through 3 of this section shall be met unless the board:

a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. Approves the use of an equivalent method;

c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subdivision H 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

I. Stack heights.

~~1. The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by:~~

~~a. So much of the stack height of any source as exceeds good engineering practice, or~~

~~b. Any other dispersion technique.~~

~~2. Subdivision I 1 of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.~~

The provisions of § 120-05-02 H apply.

J. Review of major stationary sources and major modifications source applicability and exemptions.

1. No stationary source or modification to which the requirements of subsections K through S of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The board has authority to issue any such permit.

2. The requirements of subsections K through S of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the federal Clean Air Act that it would emit, except as this section otherwise provides.

3. The requirements of subsections K through S of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107 (d) (1) (C) of the federal Clean Air Act.

4. The requirements of subsections K through S of this section shall not apply to a particular major stationary source or major modification; if:

a. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution ~~, and the governor submits a request to the administrator that it be exempt from those requirements~~ ; or

b. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber processing plants.

(27) Charcoal production plants.

(28) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act; or

c. The source *or modification* is a portable stationary source which has previously received a permit under this section, and

(1) The owner proposes to relocate the source and emissions of the source at the new location would be temporary; and

(2) The emissions from the source would not exceed its allowable emissions; and

(3) The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated; and

(4) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board ; ~~or~~ .

~~d. The source or modification was not subject to this section, with respect to particulate matter, as in effect before July 31, 1987, and the owner:~~

~~(1) Obtained all final federal, state and local preconstruction approvals or permits necessary under Part VIII before July 31, 1987;~~

~~(2) Commenced construction within 18 months after July 31, 1987, or any earlier time required under Part VIII; and~~

~~(3) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time; or~~

~~e. The source or modification was subject to this section or 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner submitted an application for a permit under this section before that date, and the board subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of subsections K through S of this section that were in effect before July 31, 1987, shall apply to such source or modification.~~

5. The requirements of subsections K through S of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the federal Clean Air Act.

6. The requirements of subsections L, N and P of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

a. Would impact no class I area and no area where an applicable increment is known to be violated, and

b. Would be temporary.

7. The requirements of subsections L, N and P of this section as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the federal Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

8. The board may exempt a stationary source or

modification from the requirements of subsection N of this section with respect to monitoring for a particular pollutant if:

a. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m³, 8-hour average

Nitrogen dioxide - 14 ug/m³, annual average

Total suspended particulate - 10 ug/m³, 24-hour average

PM10 - 10 ug/m³, 24-hour average

Sulfur dioxide - 13 ug/m³, 24-hour average

Ozone[1]

Lead - 0.1 ug/m³, 3-month average

Mercury - 0.25 ug/m³, 24-hour average

Beryllium - 0.001 ug/m³, 24-hour average

Fluorides - 0.25 ug/m³, 24-hour average

Vinyl chloride - 15 ug/m³, 24-hour average

Total reduced sulfur - 10 ug/m³, 1-hour average

Hydrogen sulfide - 0.2 ug/m³, 1-hour average

Reduced sulfur compounds - 10 ug/m³, 1-hour average; or

.....

[1] No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this section would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

.....

b. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision J 8 a of this section, or the pollutant is not listed in subdivision J 8 a of this section.

~~9. a. At the discretion of the board, the requirements for air quality monitoring of PM10 in subdivisions N 1 a through N 1 d of this section may not apply to a particular source or modification when the owner submits an application for a permit under this section on or before June 1, 1988, and the board subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in subdivisions N 1 a through N 1 d.~~

~~b. The requirements for air quality monitoring of PM10 in subdivisions N 1 e and d and N 3 of this section shall apply to a particular source or modification if the owner submits an application for a permit under this section after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes otherwise complete in accordance with the provisions set forth under subdivision N 1 h of this section, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 e requires shall have been gathered over that shorter period.~~

~~10. The requirements of subdivision L 2 of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the board subsequently determined that the application as submitted before that date was complete.~~

K. Control technology review.

1. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

2. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act that it would have the potential to emit in significant amounts.

3. A major modification shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

4. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent

phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

L. Source impact analysis.

The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any national ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

M. Air quality models.

1. All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the U.S. Environmental Protection Agency Guideline, EPA-450/2-78-027R, Guideline on Air Quality Models (see Appendix M).

2. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subsection R of this section.

N. Air quality analysis.

1. Preapplication analysis.

a. Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(1) For the source, each pollutant that it would have the potential to emit in a significant amount;

(2) For the modification, each pollutant for which it would result in a significant net emissions increase.

b. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

c. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

d. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

~~c. For any application which becomes complete, except as to the requirements of subdivision N 1 e and d of this section, between June 8, 1981, and February 9, 1982, the data that subdivision N 1 e of this section requires shall have been gathered over at least the period from February 9, 1981 to the date the application becomes otherwise complete, except that:~~

~~(1) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.~~

~~(2) If the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than four months), the data that subdivision N 1 e of this section requires shall have been gathered over at least that shorter period.~~

~~(3) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the board may waive the otherwise applicable requirements of this subsection W to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.~~

~~f.~~ *e.* The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of Section IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subdivision N 1 of this section.

~~g. For any application that becomes complete, except as to the requirements of subdivision N 1 e and d pertaining to PM10, after December 1, 1988, and no later than August 1, 1989, the data that subdivision N 1 e requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 e requires shall have been gathered over that shorter period.~~

~~h. With respect to any requirements for air quality monitoring of PM10 under subdivisions J 9 a and b, the owner shall use a monitoring method approved by the board and shall estimate the ambient concentrations of PM10 using the data collected by such approved monitoring method in accordance with estimating procedures approved by the board.~~

2. Post-construction monitoring. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

3. Operation of monitoring stations. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying subsection N of this section.

O. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

1. With respect to a source or modification to which subsections K, L, N and P of this section apply, such information shall include:

a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

b. A detailed schedule for construction of the source or modification;

c. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

2. Upon request of the board, the owner shall also provide information on:

a. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

b. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

P. Additional impact analyses.

1. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

2. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

3. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

Q. Sources impacting federal class I areas - additional requirements.

1. Notice to administrator. The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

a. Notification of the permit application status as provided in subdivision R 1 of this section.

b. Notification of the public comment period on the application as provided in subdivision R 6 e of this section.

c. Notification of the final determination on the application and issuance of the permit as provided in subdivision R 6 i of this section.

d. Notification of any other action deemed appropriate by the board.

~~1.~~ *2.* Notice to federal land managers. The board shall provide written notice of any permit application for ε

proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under subsection R of this section, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

~~2.~~ *3.* Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

~~3.~~ *4.* Visibility analysis. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subdivision Q ~~1~~ *2* of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board must, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

~~4.~~ *5.* Denial - impact on air quality related values. The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

~~5.~~ *6.* Class I variances. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and ~~he~~ so certifies, the board may, provided that the applicable requirements of this section are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hour maximum 37

Sulfur dioxide:

Annual arithmetic mean 20

24-hour maximum 91

Three-hour maximum 325

Nitrogen dioxide:

Annual arithmetic mean 25

~~6.~~ *7.* Sulfur dioxide variance by governor with federal land manager's concurrence. The owner of a proposed source or modification which cannot be approved under subdivision Q ~~5~~ *6* of this section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to ~~his~~ *the federal land manager's* concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subdivision Q ~~8~~ *9* , provided that the applicable requirements of this section are otherwise met.

~~7.~~ *8.* Variance by the governor with the president's concurrence. In any case whether the governor

recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subdivision Q ~~8~~ *9* of this section, provided that the applicable requirements of this section are otherwise met.

~~8.~~ *9.* Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subdivision Q ~~6~~ *7* or ~~7~~ *8* of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

R. Public participation.

1. Within 30 days after receipt of an application the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of Part VIII are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this section, the date on which the board received all required information.

2. No later than 30 days after receiving the initial determination notification required under subdivision R 1 of this section, the applicant shall notify the public about the proposed source as required in subdivision R 3 of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subdivision R 4 of this section.

3. The public notice required under subdivision R 2 of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the information briefing.

4. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

5. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subdivision R 3 of this section and for providing the informational briefing as required in subdivision R 4 of this section.

6. Within one year after receipt of a complete application, the board shall make a final determination on the application. This involves performing the following actions in a timely manner:

a. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

b. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

c. If appropriate, hold a public briefing on the

preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board shall notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification shall be published at least 30 days prior to the day of the briefing.

d. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification shall be published at least 30 days prior to the day of the hearing.

e. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: ~~state and~~ local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

f. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

g. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board shall consider the applicant's response in making a final decision. The board shall make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

h. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

i. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

S. Source obligation.

1. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this section who commences construction or operation after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in subsection Z of this section.

2. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The board may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subsections K through S of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

T. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review conducted pursuant to this section shall be coordinated by the administrator with the broad environmental reviews under that Act and under Section 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

U. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which the governor of an affected state or indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute ~~and his~~ . *The administrator's* determination, or the results of agreements reached through other means, shall become part of the applicable State Implementation Plan and shall be enforceable as part of such plan.

V. Interstate pollution abatement.

1. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction.

2. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the State Implementation Plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

3. Notwithstanding any permit granted pursuant to this section, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subdivision V 2 of this section.

W. Innovative control technology.

1. *Prior to the close of the public comment period under subsection R* an owner of a proposed major stationary source or major modification may request , *in writing, that* the board ~~in writing no later than the close of the public comment period under subsection R to~~ approve a system of innovative control technology.

2. The board , *with the consent of the governor(s) of affected state(s),* shall determine that the source or modification may employ a system of innovative control technology, if:

a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

b. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subdivision K 2 of this section by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

c. The source or modification would meet the requirements of subsections K and L of this section based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

d. The source or modification would not, before the date specified by the board:

(1) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(2) Impact any area where an applicable increment is known to be violated;

e. All other applicable requirements including those for public participation have been met; and

f. The provisions of subsection Q of this section (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

3. The board shall withdraw any approval to employ a system of innovative control technology made under this section, if:

a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

c. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subdivision W 3 of this section, the board may allow the source or

modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

X. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions X 2 through X 4 of this section or subdivision P 5 of § 120-08-04.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of Part VIII.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall ~~hold a formal hearing on the issue if one is requested or, if no hearing is requested, decision to consider the shutdown permanent shall become final~~ *(i) hold a formal hearing on the issue, if one is requested; or (ii) render a final decision to consider the shutdown permanent, if no hearing is requested .*

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shut down permanently prior to any final decision rendered under subdivision X 3 of this section.

Y. Transfer of permits.

1. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another should not apply to the relocation of portable facilities that are exempt from the provisions of subsections K through S of this section by subdivision J 4 c of this section.

Z. Permit invalidation, revocation, and enforcement.

1. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

2. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments thereto;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emision limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subdivision Z 2 of this section or for any other violations of these regulations.

4. Violation of these regulations shall be grounds for revocation of permits issued under this section and

are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

5. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

AA. Circumvention.

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

APPENDIX L.
PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

I. Prevention of Significant Deterioration Areas are geographically defined below by locality for the following criteria pollutants:

A. Particulate matter.

AQCR 1 through 7	All areas

B. Sulfur dioxide.

AQCR 1 through 7	All areas

C. Carbon monoxide.

1. AQCR 1 through 6	All areas
2. AQCR 7	All areas except Alexandria City Arlington County

D. Ozone (volatile organic compounds):

1. AQCR 1	All areas except the portion of White Top Mountain above 4,500 feet elevation located in Smyth County
2. AQCR 2	All areas
3. AQCR 3	All areas
4. AQCR 4	All areas except Stafford County
5. AQCR 5	All areas except Charles City County Chesterfield County Hanover County Henrico County Colonial Heights City Hopewell City Richmond City
6. AQCR 6	All areas except James City County York County Chesapeake City Hampton City Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City
7. AQCR 7	No area

E. Nitrogen oxides.

AQCR 1 throug 7	All areas

F. Lead.

AQCR 1 through 7	All areas

II. All areas of the state are geographically defined as Prevention of Significant Deterioration Areas for the following pollutants:

Mercury

Beryllium

Asbestos

Fluorides

Sulfuric acid mist

Vinyl chloride

Total reduced sulfur:

Hydrogen sulfide
Methyl mercaptan
Dimethyl sulfide
Dimethyl disulfide

Reduced sulfur compounds:

Hydrogen sulfide
Carbon disulfide
Carbonyl sulfide

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)

Municipal waste combustor metals (measured as

particulate matter)

Municipal waste combustor acid gases (measured as the sum of S02 and HC1)

III. The classification of Prevention of Significant Deterioration Areas is as follows:

A. Class I.

1. Federal - James River Face Wilderness Area (located in AQCR 2) and Shenandoah National Park (located in AQCR 2 and AQCR 4).

2. State - None

B. Class II - All areas of the state not designated in Class I.

C. Class III - None.

IV. The area classification prescribed in Section III may be redesignated in accordance with 40 CFR 52.21(e), (g), (u) and (t).

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.**

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Public Hearing Date: April 28, 1993 - 4 p.m.
Written comments may be submitted through June 18, 1993.
(See Calendar of Events section for additional information)

Summary:

This regulation is designed to ensure that the rights of students who may become subjects of research are protected. The regulation specifically addresses the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review board to oversee all research involving students that is conducted within the realm of its authority.

VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.

§ 1. Definitions.

"Agency" means State Department of Education (state educational agency), local school divisions, Virginia Schools for the Deaf and Blind, or any proprietary school certified by the Board of Education.

"Assent" means a student's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

"Board" means the State Board of Education.

"Department" means the state Department of Education.

"Human research" means any systematic investigation which utilizes human subjects who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.

"Human subject" means a living individual about whom an investigator (whether professional or subject) conducting research contains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Intervention includes both physical procedures by which data are gathered (for example, surveys, questionnaires) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual, and which the individual can reasonably expect will be made public, for example, a medical record. Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

For the purposes of these regulations, human subjects refers to students.

"Informed consent" means the knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free power of choice. For the purposes of research, the basic elements of information necessary to such consent shall include the following:

1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonable to be expected;

2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the person;

3. An instruction that the person may withdraw his

consent and discontinue participation in the human research at any time without prejudice to him;

4. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols; and

5. An offer to answer and answers to any inquiries by the person concerning the procedures and protocols.

"Local education agency" (LEA) means the local school division responsible for providing educational services to students.

"Minimal risk" means the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

That which may be considered risk to students includes over testing, labeling, over dependence on the researcher, expecting or forcing consent and continued participation, over using research subject, not identifying purposes for research or the treatment, asking inappropriate questions, or showing more concern for the data than the students.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the student.

"Parent" means a parent, a guardian, or a person acting as a parent of a child. The term "parent" means either parent, unless the LEA or department has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child. The definition also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives, as well as the persons who are legally responsible for a child's welfare. The term also means a surrogate parent appointed pursuant to provisions set forth in VR 270-01-0007, Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia. A child 18 years or older, who has not been declared incompetent by a court, may assert any rights under these regulations in his own name.

"Permission" means the agreement of parent(s), guardian, or an individual acting as a parent of a student in the absence of a parent or guardian, to the participation of the student in research.

"Qualified review committee" means a group specifically formed to review research involving human subjects conducted or sponsored by an entity in order to protect the rights of the human subjects of such research.

"Student" means persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

"Subject-at-risk" means any individual who may be exposed to the possibility of injury including physical, psychological, or social injury, as a consequence of participation as a subject in any research, development, or related activity which departs from the application of those established and accepted methods necessary as to meet his needs, or which increases the ordinary risks of daily life.

"Superintendent" means the Superintendent of Public Instruction for the department. "LEA superintendent" means the local school division superintendent.

§ 2. Authority.

These regulations are promulgated under the authority of § 22.1-16.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

§ 3. Applicability.

These regulations shall apply to the Virginia Department of Education or any public schools including the Virginia Schools for the Deaf and Blind or any proprietary schools certified by the Board of Education.

§ 4. Policy.

A. No human research may be conducted without informing the parent of the student in writing of the risks, procedures, and discomforts of the research. The consent of the parent of the student to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in § 10 F of these regulations. Special arrangements shall be made for those who need special assistance in understanding the consequences of being a participant in human research.

B. Each human research activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities.

C. The individual conducting the research shall be required to notify all parents of students who were participants in the research of the risks caused by the research which are discovered after the research has concluded.

§ 5. Exemptions.

Research activities in which the only involvement of students will be in one or more of the following categories are exempt from these regulations:

1. Research or student learning outcomes assessments conducted in educational settings involving regular or special education instructional strategies, the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods, or the use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that students cannot be identified, directly or through identifiers linked to the students.

2. Research involving survey or interview procedures unless responses are recorded in such a manner that the students can be identified, directly or through identifiers linked to the students, and either (i) the student's responses, if they become known outside the research, could reasonably place the student at risk of criminal or civil liability or be damaging to the student's financial standing or employability or (ii) the research deals with sensitive aspects of the student's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

3. Research involving solely the observation of public behavior, including observation by participants, unless observations are recorded in such a manner that the students can be identified, directly or through identifiers linked to the students, and either (i) the observations recorded about the individual, if they become known outside the research, could reasonably place the student at risk of criminal or civil liability or be damaging to the student's financial standing or employability, or (ii) the research deals with sensitive aspects of the student's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

4. Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner so that students cannot be identified, directly or through identifiers linked to the students.

5. Research involving solely a combination of any of the activities described in this section.

§ 6. Certification process.

A. Agencies seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a research review committee. The agency shall report annually to the Superintendent giving assurance that a committee exists and is functioning.

These reports shall include a list of committee members, their qualifications for service on the committee, and their school affiliation. A copy of the minutes of committee meetings shall be kept on file with the reporting agency.

B. Prior to the initiation of a human research project, the agency shall also send to the agency head, a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a student in the research project, a description of what will be done to the students, and a copy of the informed consent statement(s).

C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with an agency having a committee, and such human research as he conducts or proposes to conduct shall be subject to review and approval by the committee in the manner set forth in this section.

D. The Superintendent may inspect the records of the committee.

E. The chairperson of the committee shall report as soon as possible to the agency head and to the Superintendent any violation of the research protocol which led the committee to either suspend or terminate the research.

§ 7. Composition of research review committee.

A. Each committee must have at least five members, appointed by the agency head, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the agency. The committee must be sufficiently qualified through the maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of students in human research. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of agency regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee reviews research that has an impact on an institutionalized or other vulnerable category of students, including residents of mental health, mental retardation, or correctional facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these students and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of members of one profession, and at least one member must be an individual whose primary concerns are in noneducation areas.

C. Each committee shall include at least one member who is not otherwise affiliated with the agency and who is not part of the immediate family of a person who is affiliated with the agency.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in

which the member has a conflicting interest, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflicting interest. The committee's size shall be increased in the case of conflicting interests resulting in a decrease of the committee below five persons.

E. No member of the committee shall be directly involved in the proposed human research or have administrative approval authority over the proposed human research except in connection with his responsibilities as a member of the committee.

F. A committee may, in its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

G. A quorum of the committee shall consist of a majority of its members.

H. The committee and the agency shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

§ 8. Elements of the committee's review process.

A. No human research shall be conducted or authorized by an agency unless the human research review committee has reviewed and approved the proposed human research project giving consideration to the following factors:

1. The adequacy of the description of potential benefits and risks involved and adequacy of the methodology of the research;

2. The degree of risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;

3. Whether the rights and welfare of the students are adequately protected;

4. Whether the risks to the students are outweighed by the potential benefits to them;

5. Whether the informed consent is to be obtained by methods that are adequate and appropriate and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular students of the research;

6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;

7. Whether criteria for selection of students are equitable;

8. Whether the research conforms with such other requirements as the board may establish; and

9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of students.

B. Each committee shall review approved projects to ensure conformity with the approved proposal at least annually.

C. Research must be approved by the committee which has jurisdiction over the student. When cooperating agencies conduct some or all of the research involving some or all of the students, each cooperating agency is responsible for safeguarding the rights and welfare of students and for complying with these regulations, except that in complying with these regulations agencies may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 45 calendar days after submission to the committee chairperson. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. The committee shall notify investigators and the agency in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written description of the procedure to be followed by a student or parent who has a complaint about a research project in which the student is participating or has participated.

F. Any student, or the parent of any student, who has a complaint about a research project in which the student is participating or has participated shall be referred to the committee chairperson who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

§ 9. Abbreviated review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

A. The committee may review some or all of the research listed in subsection C of this section through an expedited review procedure, if the research involves no more than minimal risk as determined by the committee chairperson. The committee may also use the expedited

review procedure to review minor changes in previously approved research during the period (of one year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the committee chairperson and one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 8 of these regulations.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the only involvement of students will be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

1. Voice recordings made for research purposes such as investigations of speech defects.

2. Moderate exercise of healthy volunteers.

3. Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate students' behavior and the research will not involve stress to students.

§ 10. Informed consent.

A. No human research may be conducted in this Commonwealth in the absence of informed consent subscribed to in writing by the student, otherwise capable of rendering informed consent, and parent. An investigator shall seek such consent only under circumstances that provide the prospective student and parent sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the student and parent shall be in language understandable to the student and parent.

B. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a parent shall be subject to the provisions of subsection C of this section. No informed consent shall include any language through which the student and parent waive or appear to waive any of their legal rights, including any release of any individual or agency or any agents thereof from liability for negligence. Notwithstanding consent by a parent, no person shall be forced to participate in any human research. Each parent shall be given a copy of the signed consent form required by § 4 A of these regulations, except as provided for in § 10 F.

C. No parent may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the student.

D. The committee may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or waive the requirements to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the students;

2. The waiver or alteration will not adversely affect the rights and welfare of the students;

3. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the students and parents will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 1 (definition of "informed consent") of these regulations. This form may be read to the student and parent, but, in any event, the investigator shall give the student and parent adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by § 1 (definition of "informed consent") of these regulations have been presented orally to the student and parent. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the student or parent. Only the short form itself is to be signed by the student or parent. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the student or parent, in addition to a copy of the short form.

F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all students and parents if it finds that the only record linking the student and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each parent will be asked whether the parent wants documentation

linking the student with the research, and the parent's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide parents with a written statement regarding the research.

G. Information regarding the human research and consent shall provide an instruction that the parent or student or both may withdraw his consent and discontinue participation in the human research at any time without prejudice to him.

§ 11. Committee records.

A. An agency, or when appropriate a committee, shall prepare and maintain adequate documentation of committee activities, including the following:

1. Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to students.

2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

3. Records of continuing review activities.

4. Copies of all correspondence between the committee and the investigators.

5. A list of committee members.

6. Written procedures for the committee.

7. Statements of significant new findings provided to parents of students.

B. The records required by this regulation shall be retained for at least five years, and records relating to research which is conducted shall be retained for at least five years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

§ 12. Role of the department, Superintendent, and the board.

A. The Superintendent or his designee shall establish and maintain records of agency assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The Superintendent or his designee shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of students involved in human research. The board shall be kept informed.

C. The Superintendent or his designee shall arrange for the printing and dissemination of copies of these regulations.

D. Each committee shall submit to the Superintendent or his designee annually a report on the human research projects reviewed and approved by the committee and to report any significant deviations from the proposals as approved.

E. The Superintendent shall submit to the Governor and the General Assembly annually a report on the human research projects reviewed and approved by the committees and any significant deviations from the proposals as approved.

§ 13. Applicability of state policies.

Nothing in these regulations shall be construed as limiting in any way the rights of students in research under regulations promulgated by the board pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 and § 22.1-16.1 of the Code of Virginia.

§ 14. Applicability of federal policies.

Human research which is subject to policies and regulations for the protection of students promulgated by any agency of the federal government shall be exempt from these regulations. Agencies shall notify the Superintendent annually of their compliance with the policies and regulations of federal agencies.

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Title of Regulation: **VR 270-01-0057. Special Education Program Standards.**

Statutory Authority: § 22.1-214 of the Code of Virginia.

Public Hearing Dates:
May 3, 1993 - 6 p.m.
May 10, 1993 - 6 p.m.
May 11, 1993 - 6 p.m.
Written comments may be submitted until June 19, 1993.
(See Calendar of Events section for additional information)

Summary:

These regulations set standards for special education programs for children with disabilities in Virginia. The

areas in which specific standards are set include teaching assignments, waivers for certain educational interpreters, and program models for school-age and preschool-age students. Criteria are set forth for teacher assignments, caseload maximums, and mixing students with different disabilities together for instruction. In addition, procedures are included for school division superintendents and directors of nonpublic education agencies to request conditional licenses for teachers, waivers for educational interpreters who have not documented their qualifications, and waivers to digress from the program models addressing caseload or mixing students with different disabilities together for instruction.

VR 270-01-0057. Special Education Program Standards.

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:

"Combined self-contained/resource" means programs where some students receive special education services 50% or more of the day and some students receive services less than 50% of their instructional day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

"Departmentalized program" means programs where several special education teachers subdivide the curriculum, allowing each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

"Early childhood special education programs" means programs for students of preschool ages (2 - 5 years old) who are eligible for special education.

"Resource" means programs where students receive special education services less than 50% of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

"Self-contained" means programs where students receive special education services 50% or more of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

PART II.
SPECIAL EDUCATION TEACHERS.

§ 2.1. Special education teachers; license required.

Special education teachers shall hold a current Virginia teaching license. In addition, each special education teacher shall hold specific endorsement(s) which correspond to the area(s) of disability(ies) of students assigned to his classroom or caseload or both (refer to Figure A, Special Education Teacher Assignment Requirements).

§ 2.2. Special education conditional license.

An individual who does not hold an endorsement in the area of disability assigned may be licensed on a two-year special education conditional license if the following criteria are met:

1. The individual is employed as a teacher of special education by a Virginia public or nonpublic school; and

2. The individual holds a current Virginia teaching license (the teaching license must be effective during the two-year validity period of the special education conditional license).

The two-year special education conditional license is a nonrenewable teaching license issued to unendorsed special education teachers in order to provide them an opportunity to attain endorsement while employed in the Commonwealth of Virginia. Individuals issued the special education conditional license will be required to satisfy the special education endorsement requirements in the two-year validity period of the conditional license. However, the license may be extended for one additional year at the request of the school division superintendent or director of nonpublic education agency. Endorsement in special education areas of disability(ies) may be attained by completing the prescribed course work for endorsement through an institution of higher education or by completing the Department of Education's special education teacher endorsement program.

§ 2.3. Conditions for application of conditional license.

Local school division superintendents and directors of nonpublic education agencies shall apply for a special

education conditional license for any certified individual who is not endorsed in the area assigned to teach. The conditional license for individuals shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

§ 2.4. Timeline for application of special education conditional license.

Conditional license applications are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Application for Special Education Conditional License (form number PS-1) within 30 days of assignment in an unendorsed area of disability.

PART III.
EDUCATIONAL INTERPRETERS.

§ 3.1. Qualified educational interpreter requirements.

Requirements for personnel providing interpreting services for students who have hearing impairments, are hard of hearing or are deaf are detailed in the Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia (VR 270-01-0007).

§ 3.2. Waiver of requirements.

A. Conditions for requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall request a waiver to the requirements for any individual who does not meet the qualifications to serve as an educational interpreter. Individuals hired must be in the process of being screened for competency or be completing training to develop their interpreting skills or both. The waiver shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

B. Timeline for requesting a waiver.

Waiver of educational interpreter qualification requirements requests are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education within 30 days of assignment.

PART IV.
SPECIAL EDUCATION PROGRAMS FOR SCHOOL-AGE YOUTH.

§ 4.1. General.

The standards in Part IV specify class mix, caseload, and teacher assignment for special education programs for school-age children and youth. Public and nonpublic education agencies may offer programs for students eligible for special education outside the boundaries of these standards. However, the education agency must receive a waiver from the Virginia Department of Education to offer such programs.

§ 4.2. Self-contained programs.

Students receiving self-contained services have IEPs identifying 50% or more of their instruction each school day (excluding lunch) in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

1. Class mix. Self-contained programs are for students with the same primary disability category. Programs may include students with different secondary disability categories if the students' primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance and student with learning disability and speech-language impairment). Noncategorical primary (grades K-2) special education programs, for students identified as developmentally delayed (DD) may include certain students with identified disabilities, when student learning needs are similar. Students identified with traumatic brain injury may be placed in any program, in accordance with their IEP.

2. Caseload. Figure B prescribes maximum caseload standards.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.3. Resource programs.

Students receiving resource services have IEPs identifying that less than 50% of their instruction each school day (excluding lunch) is in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom. Resource programs include students receiving consultation or monitoring services.

1. Class mix. Resource caseloads may combine students of different disabilities, if students receive services from at least one special education teacher who holds endorsement in the students' area(s) of disability.

2. Caseload. Figure B prescribes caseload standards. Resource caseloads must include students receiving consultation or monitoring services.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.4. Combined self-contained resource.

Combined self-contained/resource programs are programs for students of one disability category where some students receive special education services 50% or more of the day and some students receive services less than 50% of the day. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

1. Class mix. Combined self-contained/resource programs are for students with one primary disability category. The class mix standards for self-contained programs apply.

a. Students with different secondary disability categories may receive services in combined self-contained/resource settings if their primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance).

b. Noncategorical primary (K-2) special education programs for students identified as developmentally delayed (DD) may include certain students with identified disabilities when student learning needs are similar.

c. Students identified with traumatic brain injury may be placed in any program in accordance with their IEP.

2. Caseload. Caseload maximums for teachers serving students receiving self-contained (S/C) services and students receiving resource (R) services are computed on the basis of a maximum point value of 20. To determine the value for a class, the following procedure should be used (refer to Figure C):

a. Determine the value to be assigned a student receiving self-contained instruction under the disability category (e.g., S/C student with learning disability with paraprofessional = 2).

b. Multiply the number of self-contained students by the assigned value (8 students x 2 = 16).

c. Add this total value for self-contained to the number of resource students (16 points + 3 R students = 19).

d. This total combined value cannot exceed the maximum value of 20.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.5. Departmentalized programs.

A departmentalized program allows several special education teachers to subdivide the curriculum, allowing each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

1. Departmentalized special education programs shall meet the following standards:

a. The general education program in that building uses a departmentalized model.

b. Teachers are assigned to subject matter on the basis of their expertise (e.g., one endorsed teacher has instructional skills in reading while another has instructional skills in math).

c. Student placements are based upon similar learning needs (as defined in their IEPs).

d. Courses offered for graduation credit must comply with the Standards for Accrediting Public Schools in Virginia (VR 270-01-0012), particularly the number of hours of instruction.

2. Class mix. Departmentalized programs may mix students of different disability categories if students receive services from at least one teacher who holds endorsement in their area(s) of disability.

3. Caseload. Departmentalized models may include students who are considered self-contained and students who are considered resource.

a. If all of the students are considered resource students (e.g., 2 of 6 periods or 3 of 7 periods per day in special education), the maximum caseload is 24 students. Building averages must be 24 students or less per teacher.

b. If the departmentalized model includes students who are considered self-contained students, caseload maximums are computed in the same manner as under combined self-contained/resource. The maximum point value per teacher must be 20. Building averages must be 20 points or less per teacher.

c. The following maximums per class period apply:

(1) 14 students: Similar student/achievement levels: One subject area and level taught to all students (e.g., English 9).

(2) 10 students: Varying student achievement levels: More than one subject area and level taught in one period (e.g., English 7 and 8; English 8 and General Math 8).

d. Special education teachers also may teach in general education, if endorsed in the assigned area(s). However, a reduction in the teacher's special education caseload must be made in proportion to the percentage of school time spent teaching in general education (e.g., 2 of 6 periods per day assigned to general education would reduce the maximum special education caseload allowed by one-third).

4. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive services from a teacher endorsed to serve their area of disability.

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

PART V.
PROGRAMS FOR EARLY CHILDHOOD SPECIAL EDUCATION.

§ 5.1. Early childhood special education.

Students of preschool ages (2 - 5) eligible for special education receive early childhood special education programs. Preschool aged students with disabilities shall receive the full range and amount of services necessary. A full-day (5 1/2 hours) program should be available to all students. A shorter program may be provided, if determined appropriate by the IEP committee and included in the student's IEP.

1. Class mix. Early childhood special education programs may mix preschool aged students with different disabilities.

2. Caseload. Figure B prescribes caseload standards.

3. Teacher assignment.

a. Figure A prescribes teacher assignment standards.

b. A teacher endorsed in hearing impairment may serve as the primary service provider for preschool-aged students identified as having a hearing impairment or deafness. However, this teacher must have evidence of coursework in the following two areas: normal growth and development from birth to age five and early childhood special education curriculum and program development.

PART VI.
PROCESS FOR REQUESTING WAIVERS FOR SPECIAL EDUCATION PROGRAMS.

§ 6.1. Conditions.

Local education agency superintendents and directors of nonpublic education agencies must request a waiver of the program standards when the programs provided for students with disabilities are outside the boundaries of these program standards, and must receive the approval from the Virginia Department of Education. This approval is in the form of a waiver of special education program standards.

§ 6.2. Requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall complete a separate request for each class/caseload. The Department of Education grants waivers on a class-by-class (caseload-by-caseload) basis, according to the description of the class provided by education agency. The education agency must notify the Department of Education if the student population in the class changes in any way.

§ 6.3. Timelines.

Waiver of special education program standards requests are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Program Standards Waiver Request (form number PS-2) within 30 days of placement/assignment outside of the boundaries of these standards. Requests for continuation of a model approved in the previous school year should be submitted before September 1 of the school year.

FIGURE A. SPECIAL EDUCATION TEACHER ASSIGNMENT REQUIREMENTS

Disability Category	Endorsement
Autism Deaf-blind Multihandicaps	severe disabilities OR any other special education endorsement, as appropriate to student needs
Developmental Delay: age 2-5	early childhood special education
Educable Mental Retardation Primary Elementary Middle Secondary	mental retardation
Emotional Disturbance	emotional disturbance
Hearing Impairment/Deaf	hearing impairment
Specific Learning Disabilities	specific learning disabilities
Severe and Profound Disabilities	severe disabilities
Visual Impairment	visual impairment
Developmental Delay: age 5-7 (Non-Categorical K-2nd) Orthopedic Impairment Other Health Impairment* Traumatic Brain Injury	any special education endorsement, as appropriate to student needs
Speech and/or Language Impairment a. itinerant b. self-contained	a. speech/language disorders b. speech/language disorders and have either elementary instruction, learning disabilities, or hearing impairment for S/C class

* certain students with Other Health Impairment may be served by appropriate pupil personnel staff, as determined by the IEP

FIGURE B. SPECIAL EDUCATION MAXIMUM CLASS/CASELOADS

	Self Contained		Resource
Disability Category	With 100% Para-professional	Without Para-professional	
Autism	8*	6*	24
Deaf-blind	8*	6*	
Developmental Delay: age 5-7 (Non-Categorical K - 2nd)	10	8	
Developmental Delay: age 2-5	8 Center Based 10 Combined**	12 Home Based and/or Itinerant	
Educable Mental Retardation: Primary Elementary Middle School Secondary	10*** 12*** 13*** 15***	8*** 8*** 8*** 8***	24 24 24 24
Trainable Mental Retardation	10*	8*	
Hearing Impairment/Deaf	10	8	24
Multihandicaps	8*	6*	
Orthopedic Impairment	10	8	8
Other Health Impairment	10	8	8
Serious Emotional Disturbance	10	8	24
Severe and Profound Disabilities	8*	6*	
Specific Learning Disability	10	8	24
Speech and/or Language Impairment	10	8	75 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to IEP.		
Mixed Category (SLD, ED, EMR, HI, OHI, TBI)			20 points

* Maximum caseload when integrating students into general classroom.
** Combined includes center-based preschoolers plus home based and/or itinerant preschoolers
*** Per 1993 General Assembly budget.

FIGURE C. VALUES FOR SELF CONTAINED STUDENTS WHEN COMBINED WITH RESOURCE

Disability Category	With 100% Para-professional	Without Para-professional
Autism	2.5	3.3
Deaf-Blind	2.5	3.3
Developmental Delay: age 5-7	2.0	2.5
Educable Mental Retardation:		
Primary	2.0*	2.5*
Elementary	1.6*	2.5*
Middle School	1.5*	2.5*
Senior High	1.3*	2.5*
Trainable Mental Retardation	2.0	2.5
Hearing Impairment/Deaf	2.0	2.5
Multihandicaps	2.5	3.3
Orthopedic Impairment	2.0	2.5
Other Health Impairment	2.5	3.3
Serious Emotional Disturbance	2.0	2.5
Specific Learning Disability	2.0	2.5

* Per 1993 General Assembly budget

Application For Special Education Conditional License

Form PS-1

NAME OF SCHOOL DIVISION _____ NUMBER _____ NON-PUBLIC EDUCATION AGENCY _____ Department of Education Approval

Full Name	Social Security Number	Endorse Held	Yr. Expires	Years Experience in SPED	Unendorsed SPED Area Assignment	Date Hired for Unendorsed Assignment MM/DD/YY	Grade Levels Assignment P=Presch E = K-5 M = 6-8 S = 9-12	Years Experience in Unendorsed SPED Area Assignment	# Semester Hrs. Completed Toward Endorsement	Program of Study on File (Y or N)	Mentor Teacher or Resource Person Name	Mentor Teacher Resource Person Social Security Number	YES	NO

Assurance Statement: I assure that the applicants for the Special Education Conditional Licenses:

(1) hold a current Virginia teaching license and will maintain that license during the two-year conditional period; (2) are the best suited of the applicants for the position; and (3) the school division has advertised the position and made reasonable efforts to recruit and hire qualified individuals.

Documentation of these assurances is kept in the office of

_____ _____

Position of Local Staff Member Telephone Number

_____ _____ _____

Printed Name Superintendent Signature of Superintendent Date

Due to Virginia Department of Education within 30 days of Personnel Assignment

Return to: Superintendent of Public Instruction
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23216-2120

UPON APPROVAL BY THE DEPARTMENT OF EDUCATION, THE SPECIAL EDUCATION CONDITIONAL LICENSES WILL BE FORWARDED TO THE SCHOOL DIVISION SUPERINTENDENT

PROGRAM STANDARDS WAIVER REQUEST FORM NUMBER PS-2
PAGE 1 OF 2

Education Agency: _____ Public School Division Number: _____

Agency Contact: _____ Phone:_____
Program Waiver Requested for (one class/caseload per form):

	Cross-categorical Self-Contained Special Education Program
	Cross-categorical Self-Contained/Resource Special Education Program
	Excess Caseload
	Other_____

Date of Placement/Assignment which necessitates request _____
School Name _____ School Number _____
School Level _____ (Primary, Elem., Middle, Secondary)

Teacher Name _____ SS# _____

Endorsement area(s): _____
Paraprofessional (circle): NO YES _____ % of instructional day

TOTAL STUDENTS BY DISABILITY CATEGORY AND PLACEMENT

DISABILITY CATEGORY	NUMBER OF STUDENTS SELF-CONTAINED (50% or >)	NUMBER OF STUDENTS RESOURCE (< 50%)	Age Range
Autism			
Deaf-Blind			
Developmental Delay			
Educable Mental Retardation			
Hearing Impairment or Deaf			
Multiple Handicaps			
Other Health Impairment			
Orthopedic Impairment			
Serious Emotional Disturbance			
Specific Learning Disability			
Speech/Language Impairment			
Severe/Profound Disabilities			
Trainable Mental Retardation			
Traumatic Brain Injury			
Visual Impairment			
TOTAL NUMBER OF STUDENTS			
TOTAL NUMBER OF POINTS ____			

- CONTINUED ON NEXT PAGE -

PROGRAM WAIVER REQUEST FORM (PS-2)
PAGE 2 OF 2

Justification (use space below to include information pertinent to provide reader with a full understanding of the program, attach additional pages if necessary):

_____
Printed Name of Division Superintendent (or Director of non-public agency)

_____ _____
Signature of Division Superintendent (or Director of non-public agency) Date

Submit to: Superintendent of Public Instruction
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23216-2210

FOR DEPARTMENT OF EDUCATION USE ONLY

Disposition: _____

_____ _____
Deputy Superintendent for Administrative Services Date

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Title of Regulation: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

Summary:

The proposed amendments (i) delete processing procedures; (ii) clarify the "citizenship" provision to require that an applicant must be a U.S. citizen or a lawful permanent resident alien; (iii) clarify that the provision that a lock-in interest rate cannot be lowered at the time of a second reservation (a) only applies if the second reservation is made within 12 months of the original reservation lock-in agreement, and (b) applies to all loans, including VA loans and further clarify that the interest rate may be increased at the time of the second reservation; (iv) clarify that in calculating the maximum percentage of monthly income to be applied to payment of PITI on the authority's mortgage loan, the authority will include all debt payments with more than six months' duration and monthly payments lasting less then six months if making such payments will adversely affect the applicant's ability to make initial mortgage loan payments; (v) provide that an applicant's net worth does not include the value of life insurance policies and retirement plans; (vi) clarify that an applicant's credit history and outstanding collections will be considered in underwriting an authority loan; (vii) allow existing mobile homes to be financed by VHDA loans insured by FHA; and (viii) make minor clarifications and typographical corrections.

VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

PART I.
GENERAL.

§ 1.1. General.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to persons and families of low and moderate income for the acquisition (and, where applicable, rehabilitation), ownership and occupancy of single family housing units.

In order to be considered eligible for a mortgage loan hereunder, a "person" or "family" (as defined in the authority's rules and regulations) must have a "gross family income" (as determined in accordance with the authority's rules and regulations) which does not exceed the applicable income limitation set forth in Part II hereof. Furthermore, the sales price of any single family unit to be financed hereunder must not exceed the applicable sales price limit set forth in Part II hereof. The term "sales price," with respect to a mortgage loan for the combined acquisition and rehabilitation of a single family dwelling unit, shall include the cost of acquisition, plus the cost of rehabilitation and debt service for such period of rehabilitation, not to exceed three months, as the executive director shall determine that such dwelling unit will not be available for occupancy. In addition, each mortgage loan must satisfy all requirements of federal law applicable to loans financed with the proceeds of tax-exempt bonds as set forth in Part II hereof.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any mortgage loan hereunder to waive or modify any provisions of these rules and regulations where deemed appropriate by him for good cause, to the extent not inconsistent with the Act.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the mortgagor under the agreements and documents executed in connection with the mortgage loan.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the originating and administration of mortgage loans under the authority's single family housing program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

§ 1.2. Origination and servicing of mortgage loans.

A. Approval/definitions.

The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this § 1.2, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment an housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of

this § 1.2, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have a net worth equal to or in excess of $250,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination and processing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); and

4. Such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into an originating and servicing agreement ("originating and servicing agreement") with the authority containing such terms and conditions as the executive director shall require with respect to the originating and servicing of mortgage loans hereunder.

For the purposes of these rules and regulations, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. Similarly, the term "originating agreement" shall hereinafter be deemed to include the term "originating and servicing agreement," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans. The term "servicing agreement" shall continue to mean only the agreement between the authority and a servicing agent.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. Allocation of funds.

The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;

2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds;

4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and

5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;

2. The builder must have at least three years'

experience of a scope and nature similar to the proposed construction or rehabilitation; and

3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

C. Originating guide and servicing guide.

These rules and regulations constitute *a portion of* the originating guide of the authority. *The processing guide and* all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of, these rules and regulations. The executive director is authorized to prepare and from time to time revise a *processing guide and a* servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the *origination, closing and* servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the *processing guide and the* servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide *(including the processing guide)* and the servicing guide.

D. Making and purchase of new mortgage loans.

The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and these rules and regulations.

If the applicant and the application for a mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit, subject to the approval of ratification thereof by the board. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. Purchase of existing mortgage loans.

The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate and subject to the approval or ratification by the board. Upon satisfaction of the terms of the commitments, the

executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the Servicing Guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. Delegated underwriting.

The executive director may, in his discretion, delegate to one or more originating agents the responsibility for issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The issuance of such commitments shall be subject to ratification thereof by the board of the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority after closing of each mortgage loan. If the executive director determines that a mortgage loan does not comply with the originating guide, the applicable originating agreement, the Act or these rules and regulations, he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. Field originators.

The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;

3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and

4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under these rules and regulations as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of these rules and regulations requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. Servicing by the authority.

The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

PART II.
~~PROCESSING GUIDELINES~~ *PROGRAM REQUIREMENTS* .

§ 2.1. Eligible persons and families.

A. Person.

A one-person household is eligible.

B. Family.

A single family loan can be made to more than one person only if all such persons to whom the loan is made are related by blood, marriage or adoption and are living together in the dwelling as a single nonprofit housekeeping unit.

C. Citizenship.

Each applicant for an authority mortgage loan must either be a United States citizen or ~~have a valid and current alien registration card (U.S. Department of Immigration Form I-551 or U.S. Department of Immigration Form I-151)~~ *be a lawful permanent (not conditional) resident alien as determined by the U.S. Department of Immigration and Naturalization Service* .

§ 2.2. Compliance with certain requirements of the

Internal Revenue Code of 1986, as amended (hereinafter "the tax code").

The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for financing with the proceeds of tax-exempt bonds. In order to comply with these federal requirements and restrictions, the authority has established certain procedures which must be performed by the originating agent in order to determine such eligibility. The eligibility requirements for the borrower and the dwelling are described below as well as the procedures to be performed. The originating agent will certify to the performance of these procedures and evaluation of a borrower's eligibility by completing and signing the " Originating Agent's Checklist for Certain Requirements of the Tax Code" (Exhibit A(1)) prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth in other parts of this originating guide.

§ 2.2.1. Eligible borrowers.

A. General.

In order to be considered an eligible borrower for an authority mortgage loan, an applicant must, among other things, meet all of the following federal criteria:

The applicant:

1. May not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents. (See § 2.2.1 B Three-year requirement);

2. Must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days (90 days in the case of a rehabilitation loan as defined in § 2.17) after the date of the closing of the mortgage loan. (See § 2.2.1 C Principal residence requirement);

3. Must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing. (See § 2.2.1 D New mortgage requirement);

4. Must have contracted to purchase an eligible dwelling. (See § 2.2.2 Eligible dwellings);

5. Must execute an affidavit of borrower (Exhibit E) at the time of loan application;

6. Must not receive income in an amount in excess of the applicable federal income limit imposed by the tax code (See § 2.5 Income requirements);

7. Must agree not to sell, lease or otherwise transfer an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met. (See § 2.10 Loan assumptions); and

8. Must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.

B. Three-year requirement.

An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a "present ownership interest" (as hereinafter defined) in his principal residence. Each borrower must certify on the affidavit of borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see § 2.3 Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. Definition of present ownership interest. "Present ownership interest" includes:

a. A fee simple interest,

b. A joint tenancy, a tenancy in common, or a tenancy by the entirety,

c. The interest of a tenant shareholder in a cooperative,

d. A life estate,

e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time, and

f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

a. A remainder interest,

b. An ordinary lease with or without an option to purchase,

c. A mere expectancy to inherit an interest in a principal residence,

d. The interest that a purchaser of a residence acquires on the execution of an accepted offer to

purchase real estate, and

e. An interest in other than a principal residence during the previous three years.

2. Persons covered. This requirement applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. Prior tax returns. To verify that the eligible borrower meets the three-year requirement, the originating agent must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived.

The originating agent shall examine the tax returns particularly for any evidence that the eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. Review by originating agent. The originating agent must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) regarding the applicant's prior residency by reviewing any information including the credit report and the tax returns furnished by the eligible borrower for consistency, and certify to the authority that on the basis of its review, it is of the opinion that each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

C. Principal residence requirement.

1. General. An eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of the eligible borrower within 60 days (90 days in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the authority. An eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan on the affidavit of borrower (to be updated by the verification and update of information form) and as part of the attachment to the deed of trust.

2. Definition of principal residence. A principal residence does not include any residence which can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner which would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where any portion of the total living area is to be used primarily in a trade or business.

3. Land not to be used to produce income. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to the eligible borrower. The eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

4. Lot size. Only such land as is reasonably necessary to maintain the basic liveability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, ~~and~~ *or* (iii) local city and county zoning ordinances which require more acreage will be taken into consideration.

5. Review by originating agent. The affidavit of borrower (Exhibit E) must be reviewed by the originating agent for consistency with the eligible borrower's federal income tax returns and the credit report in order to support an opinion that the eligible borrower is not engaged in any employment activity or trade or business which has been conducted in his principal residence. Also, the originating agent shall review the appraiser report (Exhibit H) of an authority approved appraiser and the required

photographs to determine based on the location and the structural design and other characteristics of the dwelling that the residence is suitable for use as a permanent residence and not for use primarily in a trade or business or for recreational purposes. Based on such review, the originating agent shall certify to the authority its findings and certain opinions in the checklist for certain requirements of the tax code (Exhibit A(1)) at the time the loan application is submitted to the authority for approval.

6. Post-closing procedures. The originating agent shall establish procedures to (i) review correspondence, checks and other documents received from the borrower during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of the borrower are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating agent may establish different procedures to verify compliance with this requirement.

D. New mortgage requirement.

Mortgage loans may be made only to persons who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which the eligible borrower is liable or which was incurred on behalf of the eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.

1. Definition of mortgage. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner-financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.

2. Temporary financing. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage loan until it has determined that such construction has been satisfactorily completed.

3. Review by originating agent. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) the eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Upon such review, the originating agent shall certify to the authority that the agent is of the opinion that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of the borrower and that the borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.

E. Multiple loans.

Any eligible borrower may not have more than one outstanding authority mortgage loan.

§ 2.2.2. Eligible dwellings.

A. In general.

In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;

2. Be a one-family detached residence, a townhouse or one unit of an authority approved condominium; and

3. Satisfy the acquisition cost requirements set forth below.

B. Acquisition cost requirements.

1. General rule. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in § 2.3. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.

2. Acquisition cost requirements for assumptions. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see § 2.10 below).

3. Definition of acquisition cost. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.

a. Acquisition cost includes:

(1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the eligible borrower) to the seller (or a

related party or for the benefit of the seller) as consideration for the eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items of personal property.)

(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost. (See Acquisition Cost Worksheet, Exhibit G, Item 4 and Appraiser Report, Exhibit H).

(3) The cost of land on which the eligible dwelling is located and which has been owned by the eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.

b. Acquisition cost does not include:

(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by the eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.

(2) The imputed value of services performed by the eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.

4. Acquisition cost worksheet (Exhibit G) and Appraiser Report (Exhibit H). The originating agent is required to obtain from each eligible borrower a completed acquisition cost worksheet which shall specify in detail the basis for the purchase price of the eligible dwelling, calculated in accordance with this subsection B. The originating agent shall assist the eligible borrower in the correct completion of the worksheet. The originating agent must also obtain from the appraiser a completed appraiser's report which may also be relied upon in completing the acquisition cost worksheet. The acquisition cost worksheet of the eligible borrower shall constitute part of the affidavit of borrower required to be submitted with the loan submission. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling on the worksheet.

5. Review by originating agent. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in § 2.4. If the acquisition cost exceeds such limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases - see § 2.10 below). Also, as part of its review, the originating agent must review the acquisition cost worksheet submitted by each mortgage loan applicant, and the appraiser report, and must certify to the authority that it is of the opinion that the acquisition cost of the eligible dwelling has been calculated in accordance with this subsection B. In addition, the originating agent must compare the information contained in the acquisition cost worksheet with the information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.

6. Independent appraisal. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.

§ 2.2.3. Targeted areas.

A. In general.

In accordance with the tax code, the authority will make a portion of the proceeds of an issue of its bonds available for financing eligible dwellings located in targeted areas for at least one year following the issuance of a series of bonds. The authority will exercise due diligence in making mortgage loans in targeted areas by advising originating agents and certain localities of the availability of such funds in targeted areas and by advising potential eligible borrowers of the availability of such funds through advertising and/or news releases. The amount, if any, allocated to an originating agent exclusively for targeted areas will be specified in a forward commitment agreement between the originating agent and the authority.

B. Eligibility.

Mortgage loans for eligible dwellings located in targeted areas must comply in all respects with the requirements in

this § 2.2 and elsewhere in this guide for all mortgage loans, except for the three-year requirement described in § 2.2.1 B. Notwithstanding this exception, the applicant must still submit certain federal income tax records. However, they will be used to verify income and to verify that previously owned residences have not been used in a trade or business (and not to verify nonhomeownership), and only those records for the most recent year preceding execution of the mortgage documents (rather than the three most recent years) are required. See that section for the specific type of records to be submitted.

1. Definition of targeted areas.

a. A targeted area is an area which is a qualified census tract, as described in b below, or an area of chronic economic distress, as described in c below.

b. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the state-wide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury.

c. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury informed by the authority as to the location of areas so designated.

§ 2.3. Sales price limits.

A. The authority's maximum allowable sales price for loans which are closed on or after December 1, 1991, shall be as follows:

Area	New Construction	Existing and Substantial Rehab.
1. Washington DC-MD-VA MSA[1] ''inner areas''	$131,790	$131,790
2. ''outer areas''	$124,875	$124,875
3. Norfolk-Va. Beach-Newport News MSA[2]	$ 81,500	$ 81,500
4. Richmond-Petersburg MSA[3]	$ 79,500	$ 79,500
5. Charlottesville MSA[4]	$ 95,450	$ 79,530
6. Clarke County	$ 90,250	$ 79,530
7. Culpeper County	$ 84,050	$ 79,530
8. Fauquier County	$101,670	$ 79,530
9. Frederick County and Winchester City	$ 92,150	$ 79,530
10. Isle of Wight County	$ 81,500	$ 79,530
11. King George County	$ 89,300	$ 79,530
12. Madison County	$ 76,000	$ 76,000
13. Orange County	$ 77,900	$ 77,900
14. Spotsylvania County and Fredericksburg City	$102,700	$ 79,530
15. Warren County	$ 83,600	$ 79,530
16. Balance of State[5]	$ 75,500	$ 75,500

[1] Washington DC-Maryland-Virginia MSA. Virginia Portion: "Inner Areas" - Alexandria City, Arlington County, Fairfax City, Fairfax County, Falls Church City; "Outer Areas" - Loudoun County, Manassas City, Manassas Park City, Prince William County, Stafford County.

[2] Norfolk-Virginia Beach-Newport News MSA. Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County.

[3] Richmond-Petersburg MSA. Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City.

[4] Charlottesvillle MSA. Albemarle County, Charlottesville City, Fluvanna County, Greene County.

[5] Balance of State. All areas not listed above.

The executive director may from time to time waive the foregoing maximum allowable sales prices with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the sales price of the residences to be financed by any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

B. Effect of solar grant.

The applicable maximum allowable sales price for new construction shall be increased by the amount of any grant to be received by a mortgagor under the authority's Solar Home Grant Program in connection with the acquisition of a residence.

§ 2.4. Net worth.

To be eligible for authority financing, an applicant cannot have a net worth exceeding $20,000 plus an additional $1,000 of net worth for every $5,000 of income over $20,000. (The value of *life insurance policies, retirement plans,* furniture and household goods shall not be included in determining net worth.) In addition, the portion of the applicant's liquid assets which are used to make the down payment and to pay closing costs, up to a maximum of 25% of the sale price, will not be included in the net worth calculation.

Any income producing assets needed as a source of income in order to meet the minimum income requirements for an authority loan will not be included in the applicant's net worth for the purpose of determining whether this net worth limitation has been violated.

§ 2.5. Income requirements.

A. Maximum gross income.

As provided in § 2.2.1 A 6 the gross family income of an applicant for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this subsection A apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of § 2.2.1 A 6 are automatically met if an applicant's gross family income does not exceed the applicable limits set forth in this subsection.

For the purposes hereof, the term "gross family income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

For reservations made on or after March 1, 1989, the maximum gross family incomes for eligible borrowers shall be determined or set forth as follows:

(1) MAXIMUM GROSS FAMILY INCOME

Applicable only to loans for which reservations are taken by the authority on or after March 1, 1989, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross family income for each borrower shall be a percentage (based on family size) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended (the "Median Family Income"), with respect to the residence of such borrower, which percentages shall be as follows:

Family Size	Percentage of applicable Median Family Income (regardless of whether residence is new construction, existing or substantially rehabilitated)
1 person	70%
2 persons	85%
3 or more persons	100%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross family income limits expressed in dollar amounts for each area of the state, as established by the executive director, and each family size. Any adjustments to such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such adjustments on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

The executive director may from time to time waive the foregoing income limits with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the income of the borrowers to receive any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

(2) FmHA MAXIMUM ~~GROSS~~ FAMILY INCOME

Applicable only to loans to be guaranteed by FmHA.

The maximum ~~gross~~ family income for each borrower shall be the lesser of the ~~amount~~ *maximum gross family income* a determined in accordance with § 2.5 A (1) or FmHA income limits in effect at the time of the application.

B. Minimum income (not applicable to applicants for loans to be insured or guaranteed by the Federal Housing Administration, the Veterans Administration or FmHA (hereinafter referred to as "FHA, VA or FmHA loans").

An applicant satisfies the authority's minimum income requirement for financing if the monthly principal and interest, tax, insurance ("PITI") and other additional monthly fees such as condominium assessments (60% of the monthly condominium assessment shall be added to the PITI figure), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly ~~installment loans~~ *debt payments* with more than six months duration *(and payments on debts lasting less than six months, if making such payments will adversely affect the applicant's ability to make mortgage loan payments during the months following loan closing)* do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements.

§ 2.6. Calculation of maximum loan amount.

Single family detached residence and townhouse (fee simple ownership) Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the

sales price or appraised value, except as may otherwise be approved by the authority.

Condominiums - Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may be otherwise approved by the authority.

For the purpose of the above calculations, the value of personal property to be conveyed with the residence shall be deducted from the sales price. (See Exhibit R for examples of personal property.) The value of personal property included in the appraisal shall not be deducted from the appraised value. (See Appraiser Report, Exhibit H)

In the case of an FHA, VA or FmHA loan, the FHA, VA or FmHA insurance fees or guarantee fees charged in connection with such loan (and, if an FHA loan, the FHA permitted closing costs as well) may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or FmHA requirements; provided, however, that in no event shall this revised maximum loan amount which includes such fees and closing costs be permitted to exceed the authority's maximum allowable sales price limits set forth herein.

§ 2.7. Mortgage insurance requirements.

Unless the loan is an FHA, VA or FmHA loan, the borrower is required to purchase at time of loan closing full private mortgage insurance (25% to 100% coverage, as the authority shall determine) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance. If the authority requires FHA, VA or FmHA insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or FmHA Guarantee has been obtained. In the event that the authority purchases an FHA or, VA or FmHA loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or FmHA loans), full private mortgage insurance as described above is required unless waived by the authority.

§ 2.8. Underwriting.

A. Conventional loans.

The following requirements must be met in order to satisfy the authority's underwriting requirements. However, additional or more stringent requirements may be imposed by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required.

1. Employment and income.

a. Length of employment. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Self-employed applicants. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See § 2.2.1 C Principal residence requirement.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. Income derived from sources other than primary employment.

(1) Alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant for a loan.

(2) Social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant for a loan.

(3) Part-time employment. Part-time employment must be continuous for a minimum of six months. Employment with different employers is acceptable so long as it has been uninterrupted for a minimum of six months. Part-time employment as used in this section means employment in addition to full-time employment.

Part-time employment as the primary employment will also be required to be continuous for six months.

(4) Overtime, commission and bonus. Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. Credit.

a. Credit experience. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references *and history* are considered to be ~~one of the most~~ important requirements in order to obtain an authority loan.

b. Bankruptcies. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years ~~and has a poor credit history~~ . If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy ~~and poor credit history~~ . The authority has complete discretion to decline a loan when a bankruptcy ~~and poor credit~~ is involved.

c. Judgments *and collections* . An applicant is required to submit a written explanation for all judgments *and collections* . *In most cases,* judgments *and collections* must be paid before an applicant will be considered for an authority loan.

3. Appraisals. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

B. FHA loans only.

1. In general. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Mortgage insurance premium. Applicant's mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. Closing fees. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. Appraisals. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

C. VA loans only.

1. In general. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, most of the authority's basic eligibility requirements (including those described in §§ 2.1 through 2.5 hereof) remain in effect due to treasury restrictions or authority policy.

2. VA funding fee. 1.0% funding fee can be included in loan amount provided final loan amount does not exceed the authority's maximum allowable sales price.

3. Appraisals. VA certificates of reasonable value (CRV's) are acceptable.

D. FmHA loans only.

1. In general. The authority will normally accept FmHA underwriting requirements and property standards for FmHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Guarantee fee. 1.0% FmHA guarantee fee can be included in loan amount provided final loan amount does not exceed the authority's maximum allowable sales price.

E. FHA and VA buydown program.

With respect to FHA and VA loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see § 2.15 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain FHA requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on FHA guidelines then in effect (see also subsection B or C above, as applicable).

F. Interest rate buydown program.

Unlike the program described in subsection E above which permits a direct buydown of the borrower's monthly

payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

§ 2.9. Funds necessary to close.

A. Cash (Not applicable to FHA, VA or FmHA loans).

Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit the applicant to borrow funds for this purpose, except where (i) the loan amount is less than or equal to 80% of the lesser of the sales price or the appraised value, or (ii) the loan amount exceeds 80% of the lesser of the sales price or the appraised value and the applicant borrows a portion of the funds *under a loan program approved by the authority or* from their employer , with the approval of the private mortgage insurer , and the applicant pays in cash from their own funds an amount equal to at least 3.0% of the lesser of the sales price or the appraised value. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

B. Gift letters.

A gift letter is required when an applicant proposes to obtain funds as a gift from a third party. The gift letter must confirm that there is no obligation on the part of the borrower to repay the funds at any time. The party making the gift must submit proof that the funds are available. This proof should be in the form of a verification of deposit.

C. Housing expenses.

Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed carefully to determine if there is a substantial increase. If there is a substantial increase, the applicant must demonstrate his ability to pay the additional expenses.

§ 2.10. Loan assumptions.

A. Requirements for assumptions.

VHDA currently permits assumptions of all of its single family mortgage loans provided that certain requirements are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross family income for those assuming a loan shall be 100% of the applicable Median Family Income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the maximum gross family income shall be 115% of the applicable Median Family Income (140% for a residence in a targeted area) and if assumed by a household of less than three persons, the maximum gross family income shall be 100% of the applicable Median Family Income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross family income for those assuming loans shall be as set forth in § 2.5 A of these regulations. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:

1. Assumptions of conventional loans.

a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross family income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirement)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.2.1 B (Three-year requirement)

(5) § 2.2.2 B (Acquisition cost requirements)

(6) § 2.7 (Mortgage insurance requirements).

b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross family income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirements)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.7 (Mortgage insurance requirements).

2. Assumptions of FHA, VA or FmHA loans.

a. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions must be met:

(1) Maximum gross family income requirement in this § 2.10 A

§ 2.2.1 C (Principal residence requirement)

(3) § 2.2.1 B (Three-year requirement)

(4) § 2.2.2 B (Acquisition cost requirements).

In addition, all applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

b. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

B. Authorization to process assumptions/requirement that the authority to contacted.

Although the requirements listed in subsection A above are generally those that only originating agents are responsible for determining compliance with, in the case of assumptions, servicing agents are also authorized to make such determinations. More generally, for the purposes of this § 2.10, servicing agents may process assumption requests provided that they do so in accordance with all the requirements hereof, including those otherwise the exclusive reponsibility of originating agents. Accordingly, references are made within this section to "originating agents or servicing agents" in order to reflect this additional role of servicing agents.

The originating agent or servicing agent must in each case of a request for assumption of a mortgage loan contact the authority in order to determine which category of loans described in subsection A above applies to the loan and whether or not the requirements of the applicable category are satisfied. (For example, in cases of assumptions, the originating agent or servicing agent may not rely - as it may for new loans - on the fact that the acquisition cost of the dwelling is less than the authority's sales price limits to satisfy the acquisition cost requirement. It is therefore essential that the authority be contacted in each case.)

C. Application package for assumptions.

Once the originating agent or servicing agent has contacted the authority and it has been determined which of the categories described in subsection A above applies to the loan, the originating agent or servicing agent must submit to the authority the information and documents listed below for the applicable category:

1. Assumption package for conventional loans:

a. Conventional loans financed by the proceeds of bonds issued on or after December 17, 1981:

(1) Affidavit of borrower (Exhibit E).

(2) Affidavit of seller (Exhibit F).

(3) Acquisition cost worksheet (Exhibit G).

(4) Appraiser's report (Exhibit H).

(5) Three year's tax returns.

(6) Originating agent's checklist (Exhibit A(1)).

(7) 4506 form (Exhibit Q).

(8) Originating agent's loan submission cover letter (Exhibit 0(1).

(9) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).

(10) Verification of employment (VOE's) (and other income related information).

(11) Verification of deposit (VOD's).

(12) Credit report.

(13) Sales contract.

(14) Truth-in-Lending (Exhibit K) and estimate of charges.

(15) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).

(16) Authority underwriting qualification sheet (Exhibit B(1)).

(17) All other requirements of state and federal law must be met.

b. Conventional loans financed by the proceeds of bonds issued prior to December 17, 1981:

(1) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).

(2) Verification of employment (VOE's) (and other income related information).

(3) Verification of deposit (VOD's).

(4) Credit report.

(5) Sales contract.

(6) Truth-in-Lending (Exhibit K) and estimate of charges.

(7) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).

(8) Authority underwriting qualification sheet (Exhibit B(1)).

(9) All other requirements of state and federal law must be met.

2. Assumption package for FHA, VA or FmHA loans.

a. FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981:

~~(1) Affidavit of borrower (Exhibit E).~~

~~(2) Affidavit of seller (Exhibit F).~~

~~(3) Acquisition cost worksheet (Exhibit G).~~

~~(4) Appraiser's Report (Exhibit H).~~

~~(5) Three years' tax returns.~~

~~(6) Originating agent's checklist (Exhibit A(1)).~~

~~(7) 4506 form (Exhibit Q).~~

~~(8) Originating agent's loan submission cover letter (Exhibit O(2) or (3)).~~

~~(9) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).~~

~~(10) Sales contract.~~

~~(11) Copy of the executed FHA mortgage credit analysis worksheet if the original borrowers are to be released from liability.~~

~~(12) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).~~

~~(13) Truth-in-Lending (Exhibit K) and estimate of charges if original borrowers are to be released from liability.~~

~~(14) A copy of the FHA Notice to Homeowner, if the original borrowers will not be released from liability.~~

~~(15) In addition, all applicable requirements, if any, of FHA, VA or FmHA and those under state and federal law must be met.~~

~~b. FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981: The applicable requirements, if any, of FHA, VA or FmHA and those under state and federal law must be met.~~

~~D.~~ *B.* Review by the authority/additional requirements.

Upon receipt from an originating agent or servicing agent of an application package for an assumption, the authority will determine whether or not the applicable requirements referenced above for assumption of the loan have been met and will advise the originating agent or servicing agent of such determination in writing. The authority will further advise the originating agent or servicing agent of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty including, if applicable, pool insurance, submission of an escrow transfer letter and execution of a Recapture Requirement Notice (VHDA Doc. R-1).

§ 2.11. Leasing, loan term, and owner occupancy.

A. Leasing.

The owner may not lease the property without first contacting the authority.

B. Loan term.

Loan terms may not exceed 30 years.

C. Owner occupancy.

No loan will be made unless the residence is to be occupied by the owner as the owner's principal residence.

§ 2.12. Reservations/fees.

A. Making a reservation.

The authority currently reserves funds for each mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked-in interest rates ~~(see subdivision 5 below)~~ are also nontransferable. ~~In order to make a reservation of funds for a loan, the originating agent or field originator shall:~~ *Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline. Locked-in interest rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances.*

~~1. First make a determination based on the information then made available to it by the applicant or otherwise that neither the applicant nor the property appears to violate any of the authority's eligibility requirements for a new loan.~~

~~2. Collect a nonrefundable reservation fee in such amount as the authority may require from time to time.~~

~~3. Determine what type of mortgage insurance or guarantee will be required; specifically, whether the loan will be a conventional loan, an FHA loan, a VA loan or an FmHA loan.~~

~~4. Complete a reservation sheet (Exhibit C(1)).~~

~~5. Call the authority (after completing the four preceding requirements) between 9 a.m. and 5 p.m. Monday through Friday for the assignment of a reservation number for the loan, the interest rate~~

~~which shall be locked in for the reserved funds and an expiration date for the reservation, all of which will be assigned after the originating agent or field originator gives to the authority the following information:~~

~~a. Name of primary applicant~~

~~b. Social security number of applicant~~

~~c. Estimated loan amount~~

~~d. Originating agent's or field originator's servicer number~~

~~e. Gross family income of applicant and family, if any~~

~~f. Location of property (city or county)~~

~~g. Verification of receipt of the reservation fee~~

~~h. Type of mortgage insurance to be used (if conventional, the authority will assign the loan a suffix "C"; if FHA, the suffix will be "F"; if VA, it will be "V"; and if FmHA, it will be "FM").~~

~~6. Complete the reservation card by filling in the reservation number, interest rate, expiration date and by executing it (only an authorized representative of the originating agent or field originator may sign the reservation card) and, in addition, complete a lock-in disclosure (Exhibit C(2)) and have the applicant execute it prior to submitting it with the application package.~~

~~7. Submit the complete application package to the authority (see § 2.13) along with evidence of receipt of the reservation fee within 60 days after the authority assigns the reservation number to the loan (i.e., takes the reservation), provided that in the case of an application received by a field originator, the field originator will submit to the authority the reservation fee and such portion of the application package as the authority may require. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline.~~

B. More than one reservation.

An applicant , *including an applicant for a loan to be guaranteed by VA,* may request a second reservation if the first has expired ; ~~but in no case may the interest rate be reduced without the authority's prior approval. In addition, a second reservation fee must be collected for a second reservation~~ . *If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation.*

C. The reservation fee.

The originating agent or field originator shall collect and remit to the authority a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. ~~Reservation fees paid to field originators shall be submitted to and retained by the authority. One hundered dollars of each reservation fee paid to any originating agent will, if the loan closes, be retained by the originating agent as part of its 1.0% origination fee. If (i) the application is not submitted prior to the expiration of the reservation, or (ii) the authority determines at any time that the loan will not close, any reservation fee paid to an originating agent must be submitted to the authority within 30 days after such expiration or such determination by the authority, as applicable. If, in such cases, the fee is not received by the authority within such 30-day period, the originating agent shall be charged a penalty fee of $50 in addition to the reservation fee (see subsection D for other fees).~~ *A second reservation fee must be collected for a second reservation.* No substitutions of applicants or properties are permitted.

D. Other fees.

1. ~~Commitment~~ *Origination* fee. *In connection with the origination and closing of the loan,* the originating agent ~~must~~ *shall* collect ~~at the time of the issuance of a commitment by the authority~~ an amount equal to 1.0% of the loan amount ; ~~less $100 of the reservation fee already collected~~ (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only). ~~If the loan closes, the originating agent retains such 1.0% commitment fee as its original fee and forwards the balance of the reservation fee to the authority.~~ If the loan does not close ; ~~the commitment fee, plus the balance of the reservation fee, must be submitted to the authority when the failure to close is due to the fault of the applicant. On the other hand, if~~ *and* the failure to close is not due to the fault of the applicant, then the ~~collected commitment~~ *origination* fee ~~less the entire reservation fee may at the option of the authority be refunded to the applicant. (The total reservation fee, as required in subsection C above is always submitted to the authority when a loan fails to close.)~~ *shall be waived.*

2. Discount point. The originating agent ~~must~~ *shall* collect *from the seller* at the time of closing an amount equal to 1.0% of the loan amount ~~from the seller~~ . ~~This fee is to be remitted to the authority by the originating agent.~~

~~§ 2.13. Preparation of application package for new loans.~~

~~A. Conventional loans.~~

~~The application package submitted to the authority for approval of a conventional loan must contain the following~~

original documents:

1. Reservation sheet. (Exhibit C(1)) and lock-in disclosure. (Exhibit C(2))

2. Uniform Residential Loan Application - the application must include the authority's Addendum. (Exhibit D(1))

3. Preliminary Underwriting Form. (Exhibit B(1))

4. Credit report issued by local credit bureau and miscellaneous information as applicable explanation of bankruptcies, etc., (and any additional documentation).

5. Verification of employment (and any additional documentation).

6. Verification of other income.

7. Verification of deposits (and any additional documentation).

8. Gift letters (and verification).

9. Sales contract - contract must be signed by seller and all parties entering into the contract and state which parties are paying points and closing costs.

10. Appraisal (FHLMC No. 70) should be the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") form and should be completed by an appraiser who has been approved by FHLMC or a private mortgage insurer acceptable to the authority or who has a certification from a trade organization approved by the authority (photos and required supporting documentation).

11. Loan submission cover letter. (Exhibit O(1))

12. Appraiser's report. (Exhibit H)

13. Acquisition cost worksheet. (Exhibit G)

14. Affidavit of seller. (Exhibit F)

15. Affidavit of borrower. (Exhibit E)

16. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.

(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).

17. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

18. Signed request for copy of tax returns. (Exhibit Q)

19. U.S. Department of Housing and Urban Development ("HUD") information booklet acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulations Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

20. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

21. Truth-in-Lending Disclosure. (Exhibit K)

22. RESPA Disclosure Statement (Exhibit AA).

23. Quality Control Disclosure and Authorization (Exhibit Y).

B. FHA loans.

The application package submitted to the authority for approval of an FHA loan must contain the following items (please note that items 14 through 18, 20 and 21 are authority forms and must be submitted as originals, not copies):

1. Reservation sheet (Exhibit C(1)) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy the HUD application (FHA form 92900).

4. Copy of the Mortgage Credit Analysis Worksheet (HUD form 92900-ws).

5. Copy of the credit report.

6. Copy of verification of employment and current pay stubs.

7. Copy of verification of other income.

8. Copy of verification of deposits.

9. Copy of gift letters (and verification).

10. Copy of sales contract.

11. Assignment letter - this must reference the case

number, name of applicant.

12. Copy of appraisal - this must be on a form acceptable to FHA and must contain all supporting documentation necessary for valuation.

13. FHA Notice to Buyers. (Document F-9)

14. Loan submission cover letter. (Exhibit O(2))

15. Appraiser's report. (Exhibit H)

17. Affidavit of seller. (Exhibit F)

18. Affidavit of borrower. (Exhibit E)

19. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.

(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).

20. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

21. Signed request for copy of tax returns (Exhibit Q)

22. U.S. Department of Housing and Urban Development ("HUD") information booklet - acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended, the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

23. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

24. Truth-in-Lending Disclosure. (Exhibit K)

25. RESPA Disclosure Statement. (Exhibit AA)

26. Quality Control Disclosure and Authorization. (Exhibit Y)

C. VA loans.

The application package submitted to the authority for approval of a VA loan must contain the following items (please note that items 14 through 17, 20 and 21 are authority forms and must be submitted as originals, not copies):

1. Reservation sheet (Exhibit C(1) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy the VA application (VA form 26-1802A).

4. Copy of the Loan Analysis Worksheet (VA form 6393).

5. Copy of VA certificate of eligibility.

6. Copy of VA benefits and related indebtedness letter.

7. Copy of the credit report.

8. Copy of verification of employment (if active duty, include current LES form).

9. Copy of verification of other income.

10. Copy of verification of deposits.

11. Copy of gift letters (and verification).

12. Copy of sales contract.

13. Copy of appraisal - this must be on a form acceptable to VA and must contain all supporting documentation necessary for valuation.

14. Loan submission cover letter. (Exhibit O(3))

15. Appraiser's report. (Exhibit H)

16. Acquisition cost worksheet. (Exhibit G)

17. Affidavit of seller. (Exhibit F)

18. Affidavit of borrower. (Exhibit E)

19. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.

(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).

20. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

21. Signed request for copy of tax returns (Exhibit Q)

22. U.S. Department of Housing and Urban Development ("HUD") information booklet -

acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended, the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

23. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

24. Truth-in-Lending Disclosure. (Exhibit K)

25. RESPA Disclosure Statement. (Exhibit AA)

26. Quality Control Disclosure and Authorization. (Exhibit Y)

D. FmHA loans.

The application package submitted to the authority for approval of an FmHA loan must contain the original credit package and one photocopy thereof, as well as the following items (please note that items 13 through 17, 19 and 20 are authority forms and must be sumitted as originals, not copies):

1. Reservation sheet (Exhibit C(1)) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy of the HUD application (FHA form 92900).

4. Preliminary Underwriting Form. (Exhibit B(2))

5. Copy of the credit report.

6. Copy of verification of employment and current pay stubs.

7. Copy of verification of other income.

8. Copy of verification of deposits.

9. Copy of gift letters (and verification).

10. Copy of sales contract.

11. Copy of appraisal - this must be on a form acceptable to FmHA and must contain all supporting documentation necessary for valuation.

12. Privacy Act Statement (Form FmHA 410-9).

13. Loan submission cover letter. (Exhibit O(2))

14. Appraiser's report. (Exhibit H)

15. Acquisition cost worksheet. (Exhibit G)

16. Affidavit of seller. (Exhibit F)

17. Affidavit of borrower. (Exhibit E)

18. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof. (NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to § 2.2.1 B 3 hereof, such letter must be enclosed instead).

19. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

20. Signed request for copy of tax returns. (Exhibit Q)

21. U.S. Department of Housing and Urban Development ("HUD") information booklet - acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended, the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-in-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

22. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

23. Truth-in-Lending Disclosure. (Exhibit K)

24. RESPA Disclosure Statement. (Exhibit AA)

25. Quality Control Disclosure and Authorization. (Exhibit Y)

26. Other items which FmHA requires. The authority will advise the originating agent of such additional requirements, if any.

E. Delivery of package to the authority.

After the application package has been completed, it should be forwarded to:

Single Family Division
Originations Department
Virginia Housing Development Authority
601 South Belvidere Street
Post Office Box 5206

Richmond, VA. 23220-8206

§ 2.14. Commitment. (Exhibit J)

A. In general.

Upon approval of the applicant, the authority will send a mortgage loan commitment to the borrower in care of the originating agent. (For FmHA loans, upon approval of the applicant, the authority will submit the credit package to FmHA and upon receipt of the FmHA conditional commitment, will send the mortgage loan commitment.) Also enclosed in the commitment package will be other documents necessary for closing. The originating agent shall ask the borrower to indicate his acceptance of the mortgage loan commitment by signing and returning it to the originating agent ; along with the 1.0% commitment fee, within 15 days after the date of the commitment. If the borrower does so indicate his acceptance of the commitment, the originating agent shall retain the fee in accordance with § 2.1.2 D 1 above. If the borrower fails to so indicate his acceptance of the commitment, either by failing to return an executed original thereof or by failing to submit the fee, or both, the originating agent shall, within 20 days after the date of the commitment, notify the authority in writing of such failure. If the originating agent does not do so, the authority shall deem that commitment to have been duly accepted, and the originating agent shall be liable to the authority for the uncollected commitment fee based on the loan's failure to close as described in § 2.1.2 D 1 above.

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant and approved by the authority. Generally, no more than one commitment will be issued to an applicant in any calendar year. However, if an applicant who received a commitment fails to close the mortgage loan transaction through no fault of his own, that borrower may be considered for one additional commitment upon proper reapplication to the authority within the one year period from the cancellation or expiration of the original commitment; provided, however, that the interest rate offered in the additional commitment, if issued, *If an additional commitment is issued to an applicant, the interest rate* may be higher than the rate offered in the original commitment. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

§ 2.15. Loan settlement *Buy-down points* .

A. Loan closing.

1. In general. Upon the borrower's acceptance of the mortgage loan commitment, the originating agent will send the authority's letter and closing instructions (see Exhibits M and N) and the closing papers to the closing attorney. The originating agent should thoroughly familiarize himself with the closing instructions and should fill in all blanks such as per diem interest, appraisal fee, credit report charges to be collected at closing, and any special requirements of the commitment before the closing instructions are forwarded to the closing attorney. the authority will provide the originating agent with the documents which the closing attorney is required to complete.

Once the attorney completes the preclosing package, it should be mailed to:

Single Family Division
Pre-Closing Section
Virginia Housing Development Authority
601 South Belvidere Street
Post Office Box 4593
Richmond, VA 23220-8593

After the authority reviews the closing attorney's preliminary work and has been advised by the originating agent in the case of an FHA, VA or FmHA loan that all applicable FHA, VA or FmHA requirements have been met, it will approve closing and, a loan proceeds check will be sent to the closing attorney or firm named in the title insurance commitment or binder as approved under the issuing company's insured closing service, along with additional closing instructions. The closing attorney may disburse loan proceeds only after he has conducted the loan closing and recorded all necessary documents, including the deed of trust securing repayment of the loan to the authority, and in all other respects is in a position to disburse proceeds in accordance with the authority's letter authorizing the closing, the commitment and the instructions previously issued by the originating agent. It is the originating agent's responsibility to see that all documents and checks are received immediately after loan closings and that they are completed in accordance with the authority's requirements, Regulation Z and ECOA.

2. Special note regarding checks for buy-down points (this applies to both the monthly payment buydown program described in § 2.8 D above and the interest rate buydown program described in § 2.8 E). A certified or cashier's check made payable to the authority is to be provided at loan closing for buy-down points, if any. Under the tax code, the original proceeds of a bond issue may

not exceed the amount necessary for the "governmental purpose" thereof by more than 5.0%. If buy-down points are paid out of mortgage loan proceeds (which are financed by bonds), then this federal regulation is violated because bond proceeds have in effect been used to pay debt service rather than for the proper "governmental purpose" of making mortgage loans. Therefore, it is required that buy-down fees be paid from the seller's own funds and not be deducted from loan proceeds. Because of this requirement, buy-down funds may not appear as a deduction from the seller's proceeds on the HUD-1 Settlement Statement.

~~B. Post-closing requirements.~~

~~All post-closing documents, including the post-closing cover letter (Exhibit P), should be forwarded as follows to:~~

~~Single Family Division~~
~~Post-Closing Section~~
~~Virginia Housing Development Authority~~
~~601 South Belvidere Street~~
~~Post Office Box 5427~~
~~Richmond, VA 23220-8427~~

~~Within 10 days after the closing of the loan, the originating agent must forward to the authority the fees, interest and any other money due the authority, a repayment of the authority's outstanding construction loan, f any, private mortgage insurance affidavit and all closing documents except the original recorded deed of trust and title insurance policy and hazard insurance policy. For FmHA loans, the authority will apply to FmHA for its certificate of guarantee.~~

~~Within 90 days after loan closing, the originating agent shall forward to the authority the original recorded deed of trust, "final mortgage title insurance policy and FHA certification of insurance, VA guaranty or FmHA guarantee. Within 55 days after loan closing the originating agent shall forward to the servicing agent the original hazard insurance policy and forward a photocopy thereof to the authority.~~

~~During the 120-day period following the loan closing the originating agent shall review correspondence, checks and other documents received from the borrower for the purpose of ascertaining that the address of the property and the address of the borrower are the same, and also to ascertain any change of address during such period and shall notify the authority if such addresses are not the same or if there is any such change of address. Subject to the authority's approval, the originating agency may establish different procedures to verify compliance with the principal residence requirement in § 2.2 1 C. In the event that the originating agent receives information at any time that any item noted on the originating agent's checklist for certain requirements of the tax code may not be correct or proper, the originating agent shall immediately notify the authority. All time limits set forth in this subsection B may be modified by the authority by letter or memorandum mailed by the authority to the originating agents. In addition, the authority may waive such time limits on a case-by-case basis, by letter to the appropriate originating agent.~~

§ 2.16. Property guidelines.

A. In general.

For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination shall in turn be based solely upon a real estate appraisal's determination of the value and condition of the property.

In addition, manufactured housing (mobile homes) , *both new construction and certain existing,* may be financed only if it *the loan* is ~~new construction and~~ insured 100% by FHA (see subsection C). ~~Existing manufactured housing is not eligible for authority financing.~~

B. Conventional loans.

1. Existing housing and new construction. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state maintained road (easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements which will adversely affect the marketability of the property, such as high-tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and sewer hookups may have their own well and septic system; provided that joint ownership of a well and septic system will be considered on a case-by-case basis to determine whether such ownership is acceptable to the authority.

2. Additional requirements for new construction. New construction financed by a conventional loan must also meet Uniform Statewide Building Code and local code.

C. FHA, VA or FmHA loans.

1. Existing housing and new construction. Both new construction and existing housing financed by an FHA, VA or FmHA loan must meet all applicable requirements imposed by FHA, VA or FmHA.

2. Additional requirements for new construction. If such homes being financed by FHA loans are new manufactured housing they must meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter

masonry curtain wall conforming to standards of the Uniform Statewide Building Code, be permanently affixed to the site owned by the borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.

§ 2.17. Substantially rehabilitated.

For the purpose of qualifying as substantially rehabilitated housing under the authority's maximum sales price limitations, the housing unit must meet the following definitions:

1. Substantially rehabilitated means improved to a condition which meets the authority's underwriting/property standard requirements from a condition requiring more than routine or minor repairs or improvements to meet such requirements. The term includes repairs or improvements varying in degree from gutting and extensive reconstruction to cosmetic improvements which are coupled with the cure of a substantial accumulation of deferred maintenance, but does not mean cosmetic improvements alone.

2. For these purposes a substantially rehabilitated housing unit means a dwelling unit which has been substantially rehabilitated and which is being offered for sale and occupancy for the first time since such rehabilitation. The value of the rehabilitation must equal at least 25% of the total value of the rehabilitated housing unit.

3. The authority's staff will inspect each house submitted as substantially rehabilitated to ensure compliance with our underwriting-property standards. An appraisal is to be submitted after the authority's inspection and is to list the improvements and estimate their value.

4. The authority will only approve rehabilitation loans to eligible borrowers who will be the first resident of the residence after the completion of the rehabilitation. As a result of the tax code, the proceeds of the mortgage loan cannot be used to refinance an existing mortgage, as explained in § 2.2 1 D (New mortgage requirement). The authority will approve loans to cover the purchase of a residence, including the rehabilitation:

a. Where the eligible borrower is acquiring a residence from a builder or other seller who has performed a substantial rehabilitation of the residence; and

b. Where the eligible borrower is acquiring an unrehabilitated residence from the seller and the eligible borrower contracts with others to perform a substantial rehabilitation or performs the rehabilitation work himself prior to occupancy.

§ 2.18. Condominium requirements.

A. Conventional loans.

The originating agent must provide evidence that the condominium is approved by any two of the following: FNMA, FHLMC or VA. The originating agent must submit evidence at the time the borrower's application is submitted to the authority for approval.

B. FHA, VA or FmHA loans.

The authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan or by FmHA, in the case of an FmHA loan.

NOTE: Documents and forms referred to herein as Exhibits have not been adopted by the authority as a part of the rules and regulations for single family mortgage loans to persons and families of low and moderate income but are attached thereto for reference and informational purposes. Accordingly, such documents and forms have not been included in the foregoing rules and regulations for single family mortgage loans to persons and families of low and moderate income. Copies of such documents and forms are available upon request at the offices of the authority.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A & B).**
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C).
VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement 1 to Attachment 3.1 C).
VR 460-04-3.1300. Outpatient Physical Rehabilitative Services Regulations.
VR 460-04-8.10. Regulations for Long-Stay Acute Care Hospitals.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Public Hearing Date:
May 25, 1993 - 10 a.m.
May 26, 1993 - 9 a.m.
Written comments may be submitted through June 18, 1993.
(See Calendar of Events section for additional information)

Summary:

This proposal provides permanent regulations which supersede existing emergency regulations, and that clarify the requirements and the process for ensuring that appropriate criteria for placing recipients in

nursing facilities are met.

DMAS promulgated an emergency regulation for these criteria effective September 1, 1992. This regulatory package represents the agency's suggested proposed regulations to begin the permanent rule making process. These criteria are used by local screening teams to approve or deny Title XIX (Medicaid) payment for nursing facility or community-based care services.

Nursing home preadmission screening was implemented in Virginia in 1977 to ensure that Medicaid-eligible individuals placed in nursing homes actually required nursing home care. In 1982, DMAS obtained approval for a Section 2176 Home and Community-Based Care waiver to allow individuals who have been determined to require nursing facility services an alternative to nursing home placement. This alternative to nursing home care has become the Home and Community-Based Care Services program and offers such services as personal care, respite care, and adult day health care.

In 1989, DMAS revised a portion of the regulations related to nursing home preadmission screening to incorporate the requirement to screen all individuals for conditions of mental illness or mental retardation.

Long-term care is the fastest growing expense in Medicaid's budget. Nursing home preadmission screening is the mechanism designed to prevent inappropriate utilization of Medicaid-funded long-term care services. The goal of nursing home preadmission screening is to assess an individual's need for long-term care services. About 1982, DMAS originally developed criteria for nursing facility care based upon the Long-Term Care Information Assessment Process (DMAS-95). These criteria enabled physician, nursing home preadmission screening committees, medical review teams, and hospital and nursing facility discharge personnel to apply standards for facility admission consistently. Any individual whose care needs did not meet these criteria did not qualify for Medicaid-funded nursing facility services.

Section 32.1-330 of the Code of Virginia designates that the definition for eligibility to community based services will be included in the State Plan for Medical Assistance. Previous State Plan nursing facility criteria have always required an evaluation of both an individual's functional and nursing needs; however, regulations in existence before the current emergency regulations contained conflicting language. One section indicated that both functional capacity and nursing needs had to be met in order to authorize nursing facility level of care. Another section stated that the individual could be determined appropriate for nursing facility care when they met a category of functional dependency. The current emergency regulations and this proposed regulation remove this confusion by stating clearly that both functional dependency and medical and nursing needs must be present and that imminent risk of institutionalization must be documented in order for an individual to qualify for nursing facility care. In the existing emergency regulations, nursing needs are defined only by example of the types of nursing services which indicate a need for nursing facility care. This proposed regulation adds a definition for medical and nursing needs and clarifies and expands the list of the types of services which are provided by licensed nursing or professional personnel. It also defines imminent risk of nursing facility placement.

This proposed regulation, as does the existing emergency regulation, contains additional sections which summarize the requirements which must be met to find an individual eligible for nursing facility care or community based care or both. The list of specific care needs which do not qualify an individual for nursing facility care has been clarified, expanded, and moved to the summary section. The evaluation section clarifies specific criteria for determining when an individual is at imminent risk of nursing home placement and can be authorized for community-based care placement. It also requires the evaluator to document that a community-based care option has been explored and explained to the client or client's primary caregiver prior to authorizing nursing facility care.

The Omnibus Budget Reconciliation Act (OBRA) of 1987 required that states specify a resident assessment instrument by which all nursing facility residents were to be assessed. The Commonwealth proposed that the DMAS-95 be that instrument for Virginia but the Health Care Financing Administration (HCFA) did not approve its use. Therefore, effective March 27, 1991, Virginia implemented HCFA's Resident Assessment Instrument (RAI) as the official state instrument. The Minimum Data Set (MDS) is a component of the RAI. The MDS achieves the federally mandated purpose of resident assessment for the purpose of care planning. In addition, to reduce paperwork demands of nursing facility providers, DMAS has also adopted its use for continued stay evaluations to replace the DMAS-95.

The criteria based on the MDS mirror the criteria in the DMAS-95. Even though it was not possible to match all items between the two forms exactly, efforts were made to accommodate variations in criteria items to the extent possible. The data analysis indicates that there is no significant difference between the two assessment instruments.

Nursing home preadmission screening committees will still use the DMAS-95, the purpose of which is to determine appropriate medical care needs and proper placement in the continuum of care between community services and institutionalization.

Rehabilitation Services

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1

The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriation Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2, Outpatient hospital services and § 5, Physicians services).

The Program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

Attachment 3.1 C

The modification to outpatient rehabilitative services is also reflected in this attachment. DMAS will periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. This is changed from the requirement that assessments be conducted annually. The change to recognize the provision of psychological services by supervised licensed clinical social workers is also reflected in this Plan section.

VR 460-04-3.1300

The reference to the Rehabilitation Treatment Authorization form (DMAS-125) is deleted for outpatient rehabilitative services.

Supervision of Licensed Clinical Social Workers

VR 460-04-8.10 (Long-stay Acute Care Hospital Regulations)

The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in these state-only regulations.

VR 460-03-3.1100. Amount, Duration and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement

coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review peformance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterlization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilzation review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

~~1.~~ *A.* Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

~~a.~~ *1.* Are furnished to outpatients;

~~b.~~ *2.* Except in the case of nurse-midwife services, as

specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

~~c.~~ *3.* Are furnished by an institution that:

~~(1)~~ *a.* Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

~~(2)~~ *b.* Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

~~2.~~ *B.* Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

~~3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.~~

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

~~1.~~ *A.* Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

~~2.~~ *B.* Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

~~3.~~ *C.* Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine ~~and~~ , psychologists clinical licensed by the Board of Psychology , *or by a licensed clinical social worker under the direct supervision of a*

licensed clinical psychologist or a licensed psychologist clinical .

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. ~~Optometric~~ *Optometrists'* services.

~~1.~~ Diagnostic examination and optometric treatment procedures and services by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a

practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs.

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually *without authorization* . Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical Therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be

of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, *school divisions,* or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. ~~This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed by a physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

1. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

2. Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

3. Repealed.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The

day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

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

"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.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1(§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to

eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

(1) Self-care and hygiene skills;

(2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

(1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.

(2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.

(a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).

(b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

(c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and

provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens ~~(17.e)~~

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency critieria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care.

The following is a description of the standards and the methods that will be used to assure that the medical and remedial care and services are of high quality:

§ 1. Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

§ 2. Utilization control.

A. *General acute care* hospitals.

1. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.

b. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. Long-stay acute care hospitals (nonmental hospitals).

1. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

c. At a minimum, these individuals must require

physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. In addition, the individual must meet at least one of the following requirements:

(1) Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) The individual must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(c) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

e. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

2. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.) and with terminal illnesses.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

c. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. In addition, the child must meet one of the following requirements:

(1) Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc; or

(3) Must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) Ostomy care requiring services by a licensed nurse;

(g) Services required for terminal care.

e. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

C. Nursing facilities.

1. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall *periodically* conduct ~~at least annually~~ a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later,

the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. Specialized care services.

a. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

(1) Physician visits at least once weekly;

(2) Skilled nursing services by a registered nurse available 24 hours a day;

(3) Coordinated multidisciplinary team approach to meet the needs of the resident;

(4) For residents under age 21, provision for the educational and habilitative needs of the child;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, 15 minutes per session, five days per week;

(6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, 30 minutes per session, five days a week;

(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning;

(15) Family or caregiver training; and

(16) Infection control.

D. *Intermediate Care* Facilities for the Mentally Retarded ~~(FMR)~~ *(ICF/MR)* and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ~~FMR~~ *ICF/MR* or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care ~~FMR~~ *ICF/MR* or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the

necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

E. Home health services.

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days.

3. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

a. The patient is unable to leave home without the assistance of others or the use of special equipment;

b. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;

c. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;

d. The patient has an active communicable disease and the physician quarantines the patient.

4. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

a. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;

b. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;

c. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;

d. When the duration of the treatment is such that rendering it outside the home is not practical.

5. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

a. Nursing services,

b. Home health aide services,

c. Physical therapy services,

d. Occupational therapy services,

e. Speech-language pathology services, or

f. Medical supplies, equipment, and appliances suitable for use in the home.

6. General conditions. The following general conditions apply to reimbursable home health services.

a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.

c. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. The physician orders for durable medical equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

f. A written physician's statement located in the medical record must certify that:

(1) The home health services are required because the individual is confined to his or her home (except when receiving outpatient services);

(2) The patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

(4) These services were furnished while the individual was under the care of a physician.

g. The plan of care shall contain at least the following information:

(1) Diagnosis and prognosis,

(2) Functional limitations,

(3) Orders for nursing or other therapeutic services,

(4) Orders for medical supplies and equipment, when applicable,

(5) Orders for home health aide services, when applicable,

(6) Orders for medications and treatments, when applicable,

(7) Orders for special dietary or nutritional needs, when applicable, and

(8) Orders for medical tests, when applicable, including laboratory tests and x-rays

7. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

8. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A

recipient may not receive duplicative home health aide and personal care aide services.

c. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology.

d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

e. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

F. Optometrists' services are limited to examinations (refractions) after preauthorization by the state agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

G. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

H. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

I. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

* * *

PART I.
INTENSIVE PHYSICAL REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement,

participants shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy

2. Physical Therapy

3. Cognitive Rehabilitation

4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

PART II.
INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be reques ted in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

PART III.
DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services shall, at a minimum:

A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. Describe any prior treatment and attempts to rehabilitate the patient;

C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. Document that a multi-disciplinary coordinated treatment plan specifically designed for the patient has been developed;

E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. Document each change in each of the patient's conditions;

G. Describe responses to and the outcome of treatment; and

H. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided.

PART IV.
INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3. Admissions for evaluation and/or training for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

PART V.
CONTINUING EVALUATION.

§ 5.1. Team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursment shall be provided.

PART VI.
THERAPEUTIC FURLOUGH DAYS.

§ 6.1. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

PART VII.
DISCHARGE PLANNING.

§ 7.1. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

PART VIII.
REHABILITATION SERVICES TO PATIENTS.

§ 8.1. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

A. Rehabilitative nursing.

Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability.

Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

B. Physical therapy.

Physical therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

C. Occupational therapy.

Occupational therapy services are those services

furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-language therapy.

Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. Cognitive rehabilitation.

Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

3. Cognitive rehabiitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

4. The cognitive rehabilitation services shall be an integrated part of the total patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. Psychology.

Psychology services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* ;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social work.

Social work services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational therapy.

Recreational therapy are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. Prosthetic/orthotic services.

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

J. Durable medical equipment.

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;

c. Furniture or appliance not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience, for example, an electric wheelchair plus a manual chair; cleansing wipes);

e. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and non-legend drugs);

f. Home or vehicle modifications;

g. Items not suitable for or used primarily in the home setting (i.e., but not limited to, car seats, equipment to be used while at school);

h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

PART IX.
HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare oı Medicaid, the and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Nursing care. Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Medical social services. Medical social services must be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

5. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

6. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

7. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

8. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

9. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

PART X.
COMMUNITY MENTAL HEALTH SERVICES.

§ 10.1. Utilization review general requirements.

A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;

2. The admission to service and level of care was appropriate;

3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3.1 A and B, Supplement 1 § 13d Rehabilitative Services; and

4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. Mental health services utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP)

which shall be fully completed within 30 days of initiation of services.

2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

5. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

9. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. The program shall operate a minimum of two hour

per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

5. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.

C. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psycholo gist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

4. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be

provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

F. Case management.

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

§ 10.3. Mental retardation utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. Managing personal care needs,

b. Understanding verbal commands and communicating needs and wants,

c. Earning wages without intensive, frequent and ongoing supervision or support,

d. Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

f. Making decisions which require informed consent,

g. Caring for other needs without the assistance or personnel trained to teach functional skills,

h. Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. Services for the individual shall be preauthorized annually by DMHMRSAS.

4. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. The provider shall update the plan of care at least annually.

6. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

8. The provider shall be licensed by DMHMRSAS.

B. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

1. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

3. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

PART XI.
GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

§ 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

§ 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

§ 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services

are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440 110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 11.5. Authorization for services.

A. ~~General physical rehabilitative~~ *Physical therapy, occupational therapy, and speech-language pathology* services provided in outpatient settings of acute and rehabilitation hospitals ~~and by~~ , rehabilitation agencies , *home health agencies, or school divisions* shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting , *home health agency, school division,* or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-03-3.1301. Nursing Facility and MR Criteria.

PART I.
NURSING FACILITY CRITERIA.

~~§ 1.~~ *§ 1.1* ~~Nursing facility criteria;~~ Introduction.

A. ~~Traditionally, the model for nursing facility care has been facility or institutionally based; however, it is important to recognize that nursing facility care services can be delivered outside a nursing home. Nursing facility care is the provision of services regardless of the specific setting. It is the care rather than the setting in which it is rendered that is significant.~~ The criteria for assessing *an individual's eligibility for Medicaid payment of long-term care (* nursing facility *or community-based* care *)* ~~are divided into~~ *consist of* two ~~areas~~ *components* : (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) *medical or* nursing needs. *An individual must meet both functional capacity requirements and have a medical condition which requires medical or nursing management on a daily basis in order to qualify for Medicaid payment for nursing facility or community-based care. An exception may be made when the individual does not meet the functional capacity requirement but the individual does have a health condition that requires the daily direct services of a licensed nurse that cannot be managed on an outpatient basis.*

B. The preadmission screening process ~~marks the beginning of~~ *preauthorizes* a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. *Nursing facilities' preadmission screenings are performed by agencies contracted with the Department of Medical Assistance Services (DMAS) to authorize Medicaid-funded long-term care. The authorization of Medicaid-funded long-term care may be rescinded by the nursing facility or by DMAS at any point that the individual is determined not to meet the criteria for nursing facility care.* ~~Nursing facility~~ *Medicaid-funded long-term* care services are covered by the program for individuals whose needs meet the criteria established by program regulations. *Placement in a noninstitutional setting shall be considered before nursing facility placement is sought.*

C. Nursing facilities must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity *and medical and nursing needs* . This assessment must be conducted no later than 14 days after the date of admission and promptly after a

significant change in the resident's physical or mental condition. *Prior to an individual's admission, the nursing facility must review the completed preadmission screening forms to ensure that appropriate nursing facility admission criteria have been met. If at any time during the course of the resident's stay, it is determined that the resident does not meet nursing facility criteria as defined in the State Plan for Medical Assistance, the nursing facility must initiate discharge of such resident.*

The Department of Medical Assistance Services shall conduct a ~~validation~~ survey of the assessments completed by nursing facilities to determine that services provided to the residents ~~are medically necessary~~ *meet nursing facility criteria* and that needed services are provided.

D. The criteria for nursing facility care under the Virginia Medical Assistance Program are contained herein. An individual's need for care must meet ~~this~~ *these* criteria before any authorization for payment by Medicaid will be made for either institutional or noninstitutional long-term care services. ~~Reimbursement to nursing facilities for residents requiring specialized care shall only be made on a contractual basis.~~ *The nursing home preadmission screening team is responsible for documenting on the Long-Term Care Assessment Process Instrument (DMAS-95) that the individual meets the criteria for nursing facility care and for authorizing admission to Medicaid-funded long-term care. The rating of functional dependencies on the DMAS-95 must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence. The nursing facility is also responsible for documenting, upon admission and on an ongoing basis, that the individual meets and continues to meet nursing facility criteria. For this purpose, the nursing facility will use the minimum data set (MDS).*

§ ~~2.~~ *§ 1.2.* Criteria for nursing facility care *using the DMAS-95* .

A. *Functional dependency alone is not sufficient to demonstrate the need for nursing facility care.*

B. Except as provided for in § 1.0 A, an individual may only be considered to meet the nursing facility care ~~shall be the provision of services for persons whose health needs require medical and nursing supervision or care. These services may be provided in various settings, institutional and noninstitutional.~~ *criteria when* both the functional capacity of the individual and his *medical or* nursing needs ~~must be considered in determining the appropriateness of care~~ *meet the following requirements . Even when an individual meets nursing facility criteria, placement in a noninstitutional setting shall be considered before nursing facility placement is sought.*

~~B.~~ *1. Functional capacity.*

a. Individuals may be considered ~~appropriate~~ *to meet the functional capacity requirements* for nursing facility care when one of the following describes their functional capacity *as documented on the DMAS-95 consistent with the directions for completion of the form included in the Long-Term Care Information System Assessment Process manual* :

~~1. Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Medication Administration (Item 10).~~

~~2.~~ *(1)* Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Joint Motion (Item 11) *or dependent in Medication Administration .*

~~3.~~ *(2)* Rated dependent in five to seven of the Activities of Daily Living (Items 1-7), and also rated dependent in Mobility.

~~4.~~ *(3)* Rated semi-dependent in two to seven of the Activities of Daily Living (Items 1-7) and also rated dependent in Mobility (Item 9), and Behavior Pattern and Orientation (Item 8). ~~An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.~~

~~C. Placement in a noninstitutional setting should be considered before nursing home placement is sought.~~

§ ~~3.~~ ~~Functional status.~~

b. The rating of functional dependencies on the DMAS-95 must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence.

The following abbreviations shall mean:

I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

~~A.~~ *(1)* Bathing

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is bathed (D)

~~B.~~ *(2)* Dressing

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is dressed (D)

~~6.~~ *(f)* Is not dressed (D)

~~C.~~ *(3)* Toileting

~~1.~~ *(a)* Without help day and night (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Does not use toilet room (D)

~~D.~~ *(4)* Transferring

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is transferred (D)

~~6.~~ *(f)* Is not transferred (D)

~~E.~~ *(5)* Bowel Function

~~1.~~ *(a)* Continent (I)

~~2.~~ *(b)* Incontinent less than weekly (d)

~~3.~~ *(c)* Ostomy - self-care (d)

~~4.~~ *(d)* Incontinent weekly or more (D)

~~5.~~ *(e)* Ostomy - not self-care (D)

~~F.~~ *(5)* Bladder Function

~~1.~~ *(a)* Continent (I)

~~2.~~ *(b)* Incontinent less than weekly (d)

~~3.~~ *(c)* External device - self-care (d)

~~4.~~ *(d)* Indwelling catheter - self-care (d)

~~5.~~ *(e)* Ostomy - self-care (d)

~~6.~~ *(f)* Incontinent weekly or more (D)

~~7.~~ *(g)* External device - not self-care (D)

~~8.~~ *(h)* Indwelling catheter - not self-care (D)

~~9.~~ *(i)* Ostomy - not self-care (D)

~~G.~~ *(7)* Eating/Feeding

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Spoon fed (D)

~~6.~~ *(f)* Syringe or tube fed (D)

~~7.~~ *(g)* Fed by IV or clysis (D)

~~H.~~ *(8)* Behavior Pattern and Orientation

~~1.~~ *(a)* Appropriate or Wandering/Passive less than weekly + Oriented (I)

~~2.~~ *(b)* Appropriate or Wandering/Passive less than weekly + Disoriented - Some Spheres (I)

~~3.~~ *(c)* Wandering/Passive Weekly or More + Oriented (I)

~~4.~~ *(d)* Appropriate or Wandering/Passive less than weekly + Disoriented - All Spheres (d)

~~5.~~ *(e)* Wandering/Passive Weekly or more + Disoriented - Some or All Spheres (d)

~~6.~~ *(f)* Abusive/Aggressive/Disruptive less than weekly + Oriented or Disoriented (d)

~~7.~~ *(g)* Abusive/Aggressive/Disruptive weekly or more + Oriented (d)

~~8.~~ *(h)* Abusive/Aggressive/Disruptive weekly or more + Disoriented (D)

~~9.~~ *(9)* Mobility

~~a.~~ *(a)* Goes outside without help (I)

~~b.~~ *(b)* Goes outside MH only (d)

~~c.~~ *(c)* Goes outside HH only (D)

~~d.~~ *(d)* Goes outside MH and HH (D)

~~e.~~ *(e)* Confined - moves about (D)

f. *(f)* Confined - does not move about (D)

10. *(10)* Medication Administration

a. *(a)* No medications (I)

b. *(b)* Self administered - monitored less than weekly (I)

c. *(c)* By lay persons, monitored less than weekly (I)

d. *(d)* By Licensed/Professional nurse and/or monitored weekly or more (D)

e. *(e)* Some or all by Professional nurse (D)

11. *(11) Joint Motion*

a. *(a)* Within normal limits (I)

b. *(b)* Limited motion (d)

c. *(c)* Instability - corrected (I)

d. *(d)* Instability - uncorrected (D)

e. *(e)* Immobility (D)

§ 4. Nursing needs.

2. Medical or nursing needs. A. *An individual with medical or nursing needs is an individual who has a medical condition which requires the skills of a physician or a licensed nurse to oversee his care on a daily basis in order to render direct care or to supervise the care of trained nursing assistants. The skills of a physician or licensed nurse are required when:*

a. The individual's medical condition requires observation and assessment to assure evaluation of the person's need for modification of treatment or additional medical procedures to prevent destabilization and the person has demonstrated an inability to self observe or evaluate the need to contact skilled medical professionals.

b. The potential for the individual's medical instability is high or medical instability exists due to the complexity created by the person's multiple, interrelated medical conditions.

c. The individual requires at least one of the following ongoing medical/nursing care:

1. *(1)* Application of aseptic dressings;

2. *(2)* Routine catheter care;

3. *(3)* Inhalation *Respiratory* therapy after the regimen has been established;

4. *(4)* Supervision for adequate nutrition and hydration for patients *individuals* who ; due to physical or mental impairments, are subject to *show clinical evidence of* malnourishment or dehydration;

5. Routine care in connection with plaster casts, braces, or similar devices;

6. Physical, occupational, speech, or other therapy;

7. *(5)* Therapies, *Therapeutic* exercise and positioning to maintain or strengthen muscle tone, to prevent contractures, decubiti, and deterioration ;

8. *(6)* Routine care of colostomy or ileostomy *or management of neurogenic bowel and bladder* ;

9. *(7)* Use of *physical or chemical* restraints including bedrails, soft binders, and wheelchair supports ;

10. *(8)* Routine skin care to prevent decubiti *pressure ulcers for individuals who are immobile* ;

11. *(9)* Care of small uncomplicated decubiti *pressure ulcers* , and local skin rashes; or

12. *(10)* Observation *Management* of those with sensory, metabolic, and *or* circulatory impairment for potential *with demonstrated clinical evidence of* medical complications *instability* .

(11) Chemotherapy

(12) Radiation

(13) Dialysis

(14) Suctioning

(15) Tracheostomy care

(16) Infusion therapy

(17) Oxygen

B. Services requiring more intensive nursing care, such as wounds or lesions requiring daily care, nutritional deficiencies leading to specialized feeding, and paralysis or paresis benefitting from rehabilitation, shall be reimbursed at a higher rate.

C. The final determination for nursing facility care shall be based on the individual's need for medical and nursing management. Nursing facility care criteria are intended only as guidelines. Professional judgment must always be used to assure appropriateness of care.

Even when an individual meets nursing facility criteria, provision of services in a noninstitutional setting shall be considered before nursing facility

placement is sought.

§ 1.3. Summary of nursing facility criteria.

A. An individual shall be determined to meet the nursing facility criteria when:

1. The individual has both limited functional capacity and requires medical or nursing management according to the requirements of this section; or

2. The individual is rated dependent in some functional limitations, but does not meet the functional capacity requirements, and the individual requires the daily direct services of a licensed nurse that cannot be managed on an outpatient basis (e.g., clinic, physician visits, home health services).

B. An individual shall not be determined to meet nursing facility criteria when one of the following specific care needs describes his condition:

1. An individual who requires minimal assistance with activities of daily living, including those persons whose only need in all areas of functional capacity is for prompting to complete the activity;

2. An individual who independently uses mechanical devices such as a wheelchair, walker, crutch, or cane;

3. An individual who requires limited diets such as a mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;

4. An individual who requires medications that can be independently self-administered or administered by the caregiver;

5. An individual who requires protection to prevent him from obtaining alcohol or drugs or to address a social/environmental problem;

6. An individual who requires minimal observation or assistance by staff for confusion, memory impairment, or poor judgment;

7. An individual whose primary need is for behavioral management;

8. An individual who requires observation of a chronic health care condition which is stable, not requiring frequent adjustment of an established treatment regime and which can be safely managed by nonskilled caregivers.

§ 1.4. Evaluation to determine eligibility for Medicaid payment of nursing facility or home and community-based care services.

A. Once the nursing home preadmission screening committee evaluator (evaluator) has determined whether or not an individual meets the nursing facility criteria, the evaluator must determine the most appropriate and cost-effective means of meeting the needs of the individual. The evaluator must document a complete assessment of all the resources available for that individual in the community (i.e., the immediate family, other relatives, other community resources and other services in the continuum of long-term care which are less intensive than nursing facility level of care services.

B. The evaluator shall be responsible for preauthorizing Medicaid-funded long-term care according to the needs of each individual and the support required to meet those needs.

1. The evaluator shall not authorize Medicaid-funded long-term care (nursing facility or community-based waiver services) for any individual who does not meet nursing facility criteria.

2. The evaluator shall authorize community-based waiver services as an alternative to nursing facility care only for an individual who meets the nursing facility level of care and who is in imminent risk of nursing home placement without waiver services. Imminent risk of nursing facility placement shall be determined by assessing the likelihood that the individual will be placed in a nursing facility if community-based waiver services are not offered. This assessment must be documented either on the DMAS-95 or in a separate attachment for every individual authorized to receive nursing facility or community-based waiver services. In order to authorize community-based waiver services, the evaluator must document that the individual is at imminent risk of nursing facility placement by finding that one of the following conditions is met:

a. Application for the individual to a nursing facility has been made and accepted.

b. The individual has been cared for in the home prior to the assessment and experience is available that demonstrates a deterioration in the individual's health care condition or change in available support has occurred which prevents former care arrangements from meeting the individual's need. Examples of such evidence may be, but shall not necessarily be limited to:

(1) Recent hospitalizations,

(2) Attending physician documentation, or

(3) Reported findings from medical or social service agencies.

c. There has been no change in condition or available support but evidence is available that demonstrates the individual's medical and nursing needs are not being met. Examples of such

evidence may be, but shall not necessarily be limited to:

(1) Recent hospitalizations,

(2) Attending physician documentation, or

(3) Reported findings from medical or social service agencies.

3. The evaluators shall authorize Medicaid-funded nursing facility care for an individual who meets the nursing facility criteria only when services in the community are either not a feasible alternative or the individual or the individual's representative rejects the evaluator's plan for community services. The evaluator must document that the option of community-based alternatives has been explained, the reason community-based services were not chosen, and have this document signed by the client or client's primary caregivers.

~~§ 5. Specific services which do not meet the criteria for nursing facility care.~~

~~A. Care needs that do not meet the criteria for nursing facility care include, but are not limited to, the following:~~

~~1. Minimal assistance with activities of daily living;~~

~~2. Independent use of mechanical devices such as a wheelchair, walker, crutch, or cane;~~

~~3. Limited diets such as mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;~~

~~4. Medications that can be independently self-administered or administered by the individual with minimal supervision;~~

~~5. The protection of the patient to prevent him form obtaining alcohol or drugs, or from confronting an unpleasant situation; or~~

~~6. Minimal observation or assistance by staff for confusion, memory impairment, or poor judgment.~~

~~B. Special attention shall be given to individuals who receive psychiatric treatment. These individuals must also have care needs that meet the criteria for nursing facility care.~~

~~§ 6. Summary.~~

~~In patient placement, all available resources must be explored, i.e., the immediate family, other relatives, home health services, and other community resources. When applying the criteria, primary consideration is to be given to the utilization of available community/family resources.~~

§ 1.5. Criteria for continued nursing facility care using the minimum data set (MDS).

Individuals may be considered appropriate for nursing facility care when one of the following describes their functional capacity as recorded on the Minimum Data Set (MDS) of the Resident Assessment Instrument that is specified by the Commonwealth:

1. The individual meets criteria for two to four of the Activities of Daily Living, plus Behavior and Orientation, and Joint Motion.

2. The individual meets criteria for five to seven of the Activities of Daily Living and also for Locomotion.

3. The individual meets criteria for two to seven of the Activities of Daily Living and also for Locomotion, and Behavior and Orientation. An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.

§ 1.6. Definitions based on the MDS.

A. Activities of Daily Living (ADLs).

1. Transfer (subdivision E 1 b). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents

who neither transferred from bed nor moved between locations over the entire 7-day period.

2. Dressing (subdivision E 1 d). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

3. Eating (subdivision E 1 e). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period, or

g. To meet this ADL, one of the following is checked:

(1) Subdivision L 4 a Parenteral or intravenous

(2) Subdivision L 4 b Feeding tube

(3) Subdivision L 4 c Syringe (oral feeding)

4. Toilet Use (subdivision E 1 f). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

5. Bathing (subdivision E 3 a). To meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - no help provided.

b. (1) Supervision - oversight help only

c. (2) Physical help limited to transfer only

d. (3) Physical help in part of bathing activity

e. (4) Total dependence

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

6. Bladder continence (subdivision F 1 b). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - incontinent episodes once a week or less

c. (2) Occasionally incontinent - 2+ times a week but not daily

d. (3) Frequently incontinent - tended to be incontinent daily, but some control present (e.g., on day shift)

e. (4) Incontinent - Had inadequate control; multiple daily episodes or

f. To meet this ADL, one of the following is checked:

(1) Subdivision F 3 b external cathether

(2) Subdivision F 3 c indwelling catheter

7. Bowel continence (subdivision F 1 a). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - control problems less than weekly

c. (2) Occasionally incontinent - once a week

d. (3) Frequently incontinent - 2-3 times a week

e. (4) Incontinent - Had inadequate control all (or almost all) of the time, or

f. To meet this ADL, Subdivision F 3 h, ostomy is checked.

B. Joint motion (subdivision E 4).

In order to meet this category, at least one of the following must be checked:

1. Subdivision E 4 c - Contracture to arms, legs, shoulders, or hands

2. Subdivision E 4 d - Hemiplegia/hemiparesis

3. Subdivision E 4 e - Quadriplegia

4. Subdivision E 4 f - Arm - partial or total loss of voluntary movement

5. Subdivision E 4 g - Hand - lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid)

6. Subdivision E 4 h - Leg - partial or total loss of voluntary movement

7. Subdivision E 4 i - Leg - unsteady gait

8. Subdivision E 4 j - Trunk - partial or total loss of ability to position, balance, or turn body

C. Locomotion (subdivision E 1 c).

In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 in this category:

1. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

2. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

3. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

4. (3) Extensive assistance - While resident performed part of activity over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

5. (4) Total dependence - Full staff performance of activity during entire 7 days

6. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

D. RN Observation.

In order to meet this category, at least one of the following must be checked:

1. Subdivision N 4 a - Open lesions other than stasis or pressure ulcers (e.g., cuts)

2. Subdivision N 4 f - Wound care or treatment (e.g., pressure ulcer care, surgical wound)

3. Subdivision N 4 g - Other skin care or treatment

4. Subdivision P 1 a - Chemotherapy

5. Subdivision P 1 b - Radiation

6. Subdivision P 1 c - Dialysis

7. Subdivision P 1 d - Suctioning

8. Subdivision P 1 e - Tracheostomy care

9. Subdivision P 1 f - Intravenous medications

10. Subdivision P 1 g - Transfusions

11. Subdivision P 1 h - Oxygen

12. Subdivision P 1 i - Other special treatment or procedure

E. Behavior and Orientation.

In order to meet this category, the individual must meet at least one of the categories for both behavior and orientation.

1. Behavior. To meet the criteria for behavior, the individual must meet at least one of the following:

a. Subdivision H 1 d - Failure to eat or take medications, withdrawal from self-care or leisure activities (must be checked), or

b. One of the following is coded 1 (behavior of this type occurred less than daily) or 2 (behavior of this type occurred daily or more frequently):

(1) Subdivision H 3 a - Wandering (moved with no rational purpose, seemingly oblivious to needs or safety)

(2) Subdivision H 3 b - Verbally abusive (others were threatened, screamed at, cursed at)

(3) Subdivision H 3 c - Physically abusive (others were hit, shoved, scratched, sexually abused)

(4) Subdivision H 3 d - Socially inappropriate/disruptive behavior (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)

2. Orientation. To meet this category, the individual must meet at least one of the following:

a. Subdivision B 3 d - Awareness that individual is in a nursing home - is not checked;

b. Subdivision B 3 e - None of the memory/recall ability items are recalled - must be checked; or

c. Subdivision B 4 - Cognitive skills for daily decision making - must be coded with a 2 (moderately impaired - decisions poor; cues/supervision required) or 3 (severely impaired - never/rarely made decisions).

~~§ 1.7. Adult specialized care criteria.~~

PART II.
ADULT SPECIALIZED CARE CRITERIA.

~~A.~~ *§ 2.1.* General description.

The resident must have long-term health conditions requiring close medical supervision, 24 hours licensed nursing care, and specialized services or equipment.

~~B.~~ *§ 2.2.* Targeted population.

The following individuals comprise the targeted population:

1. Individuals requiring mechanical ventilation;

2. Individuals with communicable diseases requiring universal or respiratory precautions;

3. Individuals requiring ongoing intravenous medication or nutrition administration; or

4. Individuals requiring comprehensive rehabilitative therapy services.

~~C.~~ *§ 2.3.* Criteria.

~~1.~~ *A.* The individual must require at a minimum:

~~a.~~ *1.* Physician visits at least once weekly;

~~b.~~ *2.* Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the resident resides, 24 hours a day, whose sole responsibility is the designated unit); and

~~c.~~ *3.* Coordinated multidisciplinary team approach to meet needs.

~~2.~~ *B.* In addition, the individual must meet one of the following requirements:

~~a.~~ *1.* Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of four therapy sessions (minimum of 30 minutes per session) per day, five days per week; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

~~b.~~ *2.* Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

~~c.~~ *3.* ~~Individuals that~~ *Must* require at least one of the following special services:

~~(1)~~ *a.* Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

~~(2)~~ *b.* Special infection control precautions (universal or respiratory precaution; this does not include handwashing precautions only);

~~(3)~~ *c.* Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

~~(4)~~ *d.* Daily respiratory therapy treatments that must be provided by a skilled nurse or a respiratory therapist;

~~(5)~~ *e.* Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed, second or third degree burns covering more than 10% of the body);

~~(6)~~ *f.* Multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

§ ~~8. Pediatric/adolescent specialized care criteria.~~

PART III.
PEDIATRIC AND ADOLESCENT SPECIALIZED CARE CRITERIA.

~~A.~~ *§ 3.1.* General description.

The child must have ongoing health conditions requiring close medical supervision, 24 hours licensed nursing supervision, and specialized services or equipment. The recipient must be age 21 or under.

~~B.~~ *§ 3.2.* Targeted population.

The following individuals comprise the targeted population:

1. Children requiring mechanical ventilation;

2. Children with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.);

3. Children requiring ongoing intravenous medication or nutrition administration;

4. Children requiring daily dependence on devise based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);

5. Children requiring comprehensive rehabilitative therapy services;

6. Children with terminal illness.

~~B.~~ *§ 3.2.* Criteria.

~~1.~~ *A.* The child must require at a minimum:

~~a.~~ *1.* Physician visits at least once weekly;

~~b.~~ *2.* Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit);

~~c.~~ *3.* Coordinated multidisciplinary team approach to meet needs;

~~d.~~ *4.* The nursing facility must provide for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of two hours per day, minimum.

~~2.~~ *B.* In addition, the child must meet one of the following requirements:

~~a.~~ *1.* Must require two out of three of the following physical rehabilitative services: Physical therapy, Occupational therapy, Speech-pathology services; therapy must be provided at a minimum of six therapy sessions (minimum of 15 minutes per session) per day, five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

~~b.~~ *2.* Must require special equipment such as mechanical ventilators, respiratory therapy equipment

(that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc.; or

~~c.~~ *3.* ~~Children that~~ *Must* require at least one of the following special services:

~~(1)~~ *a.* Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

~~(2)~~ *b.* Special infection control precautions (universal or respiratory precaution; this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

~~(3)~~ *c.* Dialysis treatment that is provided within the facility (i.e., peritoneal dialysis);

~~(4)~~ *d.* Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

~~(5)~~ *e.* Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed; second or third degree burns covering more than 10% of the body);

~~(6)~~ *f.* Ostomy care requiring services by a licensed nurse;

~~(7)~~ *g.* Care for terminal illness.

~~§ 9. Criteria for care in facilities for mentally retarded persons.~~

PART IV.
CRITERIA FOR CARE IN FACILITIES FOR MENTALLY RETARDED PERSONS.

~~A.~~ *§ 4.1.* Definitions.

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

"No assistance" means no help is needed.

"Prompting/structuring" means prior to the functioning, some verbal direction or some rearrangement of the environment is needed.

"Supervision" means that a helper must be present during the function and provide only verbal direction, gestural prompts, or guidance.

"Some direct assistance" means that a helper must be present and provide some physical guidance/support (with or without verbal direction).

"Total care" means that a helper must perform all or nearly all of the functions.

"Rarely" means that a behavior occurs quarterly or less.

"Sometimes" means that a behavior occurs once a month or less.

"Often" means that a behavior occurs two to three times a month.

"Regularly" means that a behavior occurs weekly or more.

~~B.~~ *§ 4.2. Utilization control.*

Utilization control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.

~~C.~~ *§ 4.3. Purpose.*

The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.

~~D.~~ *§ 4.4. Care in MR facilities.*

Care in facilities for the mentally retarded requires planned programs for habilitative needs or health related services which exceed the level of room, board, and supervision of daily activities.

Such care shall be a combination of habilitative, rehabilitative, and health services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task-learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.

~~E.~~ *§ 4.5. Evaluation.*

The evaluation and re-evaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expections of the resident's capabilities, the appropriateness of programming, and whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.

~~§ 10.~~ *§ 4.6.* Patient assessment criteria.

~~A.~~ The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan of care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized into seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.

~~B.~~ *§ 4.7. Dependency level.*

The resident must meet the indicated dependency level in two or more of categories 1 through 7.

~~1.~~ *A.* Health Status - To meet this category:

~~a.~~ *1.* Two or more questions must be answered with a 4, or

~~b.~~ *2.* Question "j" must be answered "yes."

~~2.~~ *B.* Communication Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

~~3.~~ *C.* Task Learning Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

~~4.~~ *D.* Personal Care - To meet this category:

~~a.~~ *1.* Question "a" must be answered with a 4 or a 5, or

~~b.~~ *2.* Question "b" must be answered with a 4 or a 5, or

~~c.~~ *3.* Questions "c" and "d" must be answered with a 4 or a 5.

~~5.~~ *E.* Mobility - To meet this category:

Any one question must be answered with a 4 or a 5.

~~6.~~ *F.* Behavior - To meet this category:

Any one question must be answered with a 3 or a 4.

~~7.~~ *G.* Community Living - To meet this category:

~~a.~~ *1.* Any two of the questions "b," "e," or "g" must be answered with a 4 or a 5, or

~~b.~~ *2.* Three or more questions must be answered with a 4 or a 5.

§ 4.8. Level of functioning survey.

~~1.~~ *A.* Health status.

How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

~~a.~~ *1.* Medication administration and/or evaluation for effectiveness of a medication regimen? .... 1...2...3...4

~~b.~~ *2.* Direct services: i.e. care for lesions, dressings, treatments (other than shampoos, foot power, etc.) ..... 1...2...3...4

~~c.~~ *3.* Seizures control ..... 1...2...3...4

~~d.~~ *4.* Teaching diagnosed disease control and care, including diabetes ..... 1...2...3...4

~~e.~~ *5.* Management of care of diagnosed circulatory or respiratory problems ..... 1...2...3...4

~~f.~~ *6.* Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc. ..... 1...2...3...4

~~g.~~ *7.* Observation for choking/aspiration while eating, drinking? ..... 1...2...3...4

~~h.~~ *8.* Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. ..... 1...2...3...4

~~i.~~ *9.* Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity) ..... 1...2...3...4

~~j.~~ *10.* Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more ..... 1...2...3...4

~~2.~~ *B.* Communication.

Using the key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

~~a.~~ *1.* Indicate wants by pointing, vocal noises, or signs? ..... 1...2...3...4

~~b.~~ *2.* Use simple words, phrases, short sentences? ..... 1...2...3...4

~~c.~~ *3.* Ask for at least 10 things using appropriate names? ..... 1...2...3...4

~~d.~~ *4.* Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? ..... 1...2...3...4

~~e.~~ *5.* Speak in an easily understood manner? ..... 1...2...3...4

~~f.~~ *6.* Identify self, place of residence, and significant others? ..... 1...2...3...4

~~3.~~ *C.* Task learning skills.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

~~a.~~ *1.* Pay attention to purposeful activities for 5 minutes? ..... 1...2...3...4

~~b.~~ *2.* Stay with a 3 step task for more than 15 minutes? ..... 1...2...3...4

~~c.~~ *3.* Tell time to the hour and understand time intervals? ..... 1...2...3...4

~~d.~~ *4.* Count more than 10 objects? ..... 1...2...3...4

~~e.~~ *5.* Do simple addition, subtraction? ..... 1...2...3...4

~~f.~~ *6.* Write or print ten words? ..... 1...2...3...4

~~g.~~ *7.* Discriminate shapes, sizes, or colors? . 1...2...3...4

~~h.~~ *8.* Name people or objects when describing pictures? ..... 1...2...3...4

~~i.~~ *9.* Discriminate between "one," "many," "lot"? ..... 1...2...3...4

~~4.~~ *D.* Personal and self-care.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

~~a.~~ *1.* Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? ... 1...2...3...4...5

b. 2. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? 1...2...3...4...5

~~c.~~ *3.* Perform bathing function (i.e., bathe, runs bath, dry self, etc.)? ..... 1...2...3...4...5

~~5.~~ *E.* Mobility.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

~~a.~~ *1.* Move (walking, wheeling) around environment? ..... 1...2...3...4...5

~~b.~~ *2.* Rise from lying down to sitting positions, sits without support? ..... 1...2...3...4...5

~~c.~~ *3.* Turn and position in bed, roll over? 1...2...3...4...5

~~6.~~ *F.* Behavior.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, 4=Regularly)

~~a.~~ *1.* Engage in self destructive behavior? . 1...2...3...4

~~b.~~ *2.* Threaten or do physical violence to others? ..... 1...2...3...4

~~c.~~ *3.* Throw things, damage property, have temper outbursts? ..... 1...2...3...4

~~d.~~ *4.* Respond to others in a socially unacceptable manner - (without undue anger, frustration or hostility) ..... 1...2...3...4

~~7.~~ *G.* Community living skills.

With what type of assistance would this person currently be able to (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

~~a.~~ *1.* Prepare simple foods requiring no mixing or cooking? ..... 1...2...3...4...5

~~b.~~ *2.* Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? ..... 1...2...3...4...5

~~c.~~ *3.* Add coins of various denominations up to one dollar? ..... 1...2...3...4...5

~~d.~~ *4.* Use the telephone to call home, doctor, fire, police? ..... 1...2...3...4...5

~~e.~~ *5.* Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.? ..... 1...2...3...4...5

~~f.~~ *6.* Refrain from exhibiting unacceptable sexual behavior in public? ..... 1...2...3...4...5

~~g.~~ *7.* Go around cottage, ward, building, without running away, wandering off, or becoming lost? ..... 1...2...3...4...5

~~h.~~ *8.* Make minor purchases i.e., candy, soft drink, etc.? ..... 1...2...3...4...5

VR 460-04-3.1300. Outpatient Physical Rehabilitative Services Regulations.

§ 1. Scope

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services.

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care.

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be required to meet state and federal licensing or certification requirements.

§ 2. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or by a school district employing qualified physical therapists.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophisti- cation, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 3. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or a school district employing qualified therapists.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association under the supervision of an occupational therapist as defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 4. Services for individuals with speech, hearing, and language disorders.

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 5. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, *school divisions,* or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization~~ *annually* . The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 6. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a rehabilitation agency, or a school district shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

5. Include a copy of the physician's orders and plan of care;

6. Fescribe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school districts) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. in school districts, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 7. Service limitations.

The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology services:

1. Patient must be under the care of a physician who

is legally authorized to practice and who is acting within the scope of his license.

2. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

3. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-04-8.10. Regulations for Long-Stay Acute Care Hospitals.

§ 1. Scope.

Medicaid shall cover long-stay acute care hospital services as defined in § 2 provided by hospitals certified as long-stay acute care hospitals and which have provider agreements with the Department of Medical Assistance Services.

§ 2. Authorization for services.

Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Prior authorization shall be required by submission of the information described above. Physician certification must accompany the request. Periods of care not authorized by the Department of Medical Assistance Services shall not be approved for payment.

§ 3. Criteria for long-stay acute care hospital stays.

A. Adult long-stay acute care hospital criteria.

1. The resident must have long-term health conditions requiring close medical supervision, 24-hour licensed nursing care, and specialized services or equipment needs. The population to be served includes individuals requiring mechanical ventilation, individuals with communicable diseases requiring universal or respiratory precautions, individuals requiring ongoing intravenous medication or nutrition administration, and individuals requiring comprehensive rehabilitative therapy services.

2. At a minimum, the individual must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit on which the resident resides, 24 hours a day), and coordinated multidisciplinary team approach to meet needs.

3. In addition, the individual must meet at least one of the following requirements:

a. Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

c. The individual must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(3) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(6) Multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour, stabilization of feeding, stabilization of elimination, etc.)

B. Pediatric/adolescent patients in long-stay acute care hospitals criteria.

1. To be eligible for long-stay acute care hospital services, the child must have ongoing health conditions requiring close medical supervision, 24-hour licensed nursing supervision, and specialized services or equipment needs. The recipient must be age 21 or under. The population to be served includes children requiring mechanical ventilation, those with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.), those requiring ongoing intravenous medication or nutrition administration, those requiring daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), those requiring comprehensive rehabilitative therapy services, and those with a terminal illness.

2. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit on which the child is residing 24 hours a day), and a coordinated multidisciplinary team approach to meet needs.

3. In addition, the child must meet one of the following requirements:

a. Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc; or

c. Must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(3) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(6) Ostomy care requiring services by a licensed nurse;

(7) Services required for terminal care.

4. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the specific needs of the child and must be provided in an organized manner that encourages the child to participate. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily. The services must be provided for a minimum of two hours per day.

§ 4. Documentation requirements.

A. Services not specifically documented in the resident's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

B. The long-stay acute care hospital shall maintain and retain the business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided. Such records shall be retained for a period of not less than five years from the date of service or as provided by applicable state laws, whichever period is longer, except that, if an audit is initiated within the required retention period, the records must be retained until the audit is completed and every exception resolved.

C. The following documentation must be maintained in

the resident's medical record:

1. Each record must identify the resident on each page.

2. Entries must be signed and dated (month, day, and year) by the author, followed by professional title. Care rendered by personnel under the supervision of the provider, which is in accordance with Medicaid policy, must be countersigned by the responsible licensed participating provider.

3. The attending physician must certify at the time of admission that the resident requires long-stay acute hospital care and meets the criteria as defined by DMAS.

4. The record must contain a preliminary working diagnosis and the elements of a history and physical examination upon which the diagnosis is based.

5. All services provided, as well as any treatment plan, must be entered in the record. Any drugs prescribed and administered as part of a physician's treatment plan, including the quantities, route of administration, and the dosage must be recorded.

6. The record must indicate the resident's progress, any change in diagnosis or treatment, and the response to the treatment. The documentation must include in detail all treatment rendered to the resident in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment.

7. Physician progress notes must be written at least weekly and must reflect that the resident has been examined by the physician.

8. A comprehensive nursing assessment must be made by a registered nurse at the time of admission to the facility. Nursing care plans based on an admission assessment must be resident-specific and must indicate realistic nursing needs, measurable goals, and specifically state the method by which the goals are to be accomplished. They must be updated as needed, but at least monthly. Nursing summaries, in addition to the p.r.n. (as needed) notes, are required weekly. Nursing summaries must give a current, written picture of the resident, the resident's nursing needs, the care being provided, and the resident's response to treatment. The nursing summary at a minimum must address the following: medical status; functional status in activities of daily living, elimination, mobility, and emotional/mental status; special nursing procedures; and identification and resolution of acute illnesses or episodes.

9. Social services documentation must include a social evaluation and history and a social services plan of care including a discharge plan. The social work plans of care must be resident-specific and include measurable goals with realistic time frames. Social work plans of care must be updated as needed and at least monthly every 30 days. Social services progress notes must be written at least every 30 days.

10. Activities documentation must be based on a comprehensive assessment completed by the designated activity coordinator. An activity plan of care must be developed for each resident and must include consideration of the individual's interests and skills, the physician's recommendations, social and rehabilitation goals, and personal care requirements. Individual and group activities must be included in the plan. The activity plan of care must be updated as needed but at least every 30 days. Activity progress notes must be written at least every 30 days. Therapeutic leisure activities must be provided daily.

11. Rehabilitative therapy (physical and occupational therapy or speech-language services) or other health care professional (psychologist, respiratory therapist, etc.) documentation must include an assessment completed by the qualified rehabilitation professional. A plan of care developed specific to the resident must be developed and must include measurable goals with realistic time frames. The plan of care must be updated as needed but at least every 30 days. Rehabilitative therapy or other health care professional progress notes must be written at least every 30 days.

12. Each resident's record must contain a dietary evaluation and plan of care completed by a registered dietician. The plan of care must be resident-specific and must have measurable goals within realistic time frames. The plan of care must be updated as needed, but at least every 30 days. The dietary assessment and monthly plans of care must be completed by a registered dietician. Dietary progress notes must be written at least every 30 days.

13. A coordinated interdisciplinary plan of care must be developed for each resident. The plan of care must be resident-specific and must contain measurable goals within realistic time frames. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activities coordinators, dieticians, rehabilitative therapists, direct care staff, and the resident or responsible party. At a minimum, the interdisciplinary team must review and update the interdisciplinary plan of care as needed but at least every 30 days. The interdisciplinary plan of care review must identify those attending the meeting, changes in goals and approaches, and progress made toward meeting established goals and discharge.

14. For residents age 21 and younger, the record must contain documentation that educational or habilitative services are provided as required. The documentatior

shall include an evaluation of the resident's educational or habilitative needs, a description of the educational or habilitative services provided, a schedule of planned programs, and records of resident attendance. Educational or habilitative progress notes shall be written at least every 30 days.

§ 5. Long-stay acute care hospital services.

All services must be provided by appropriately qualified personnel. The following services are covered long-stay acute care hospital services:

A. Physician services : ~~1.~~ ~~Physician~~ ~~services~~ shall be performed by a professional who is licensed to practice in the Commonwealth, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

An attending physician means a physician who is a doctor of medicine or osteopathy and is identified by the individual as having the most significant role in the determination and delivery of the individual's medical care.

B. Licensed nursing services : ~~1.~~ must be provided 24 hours a day (a registered nurse, whose sole responsibility is the designated unit on which the resident resides, must be on the unit 24 hours a day).

~~2.~~ Nursing services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a registered nurse or licensed professional nurse, or nursing assistant under the direct supervision of a registered nurse who is experienced in providing the specialized care required by the resident.

~~C. Rehabilitative services.~~

~~1.~~ *C.* Rehabilitative services shall be directly and specifically related to written plan of care designed by a physician after any needed consultation with the rehabilitation professional.

~~2.~~ Physical therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine.

~~3.~~ Occupational therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined.

~~4.~~ Speech-language services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology.

D. Ancillary services shall be provided directly and specifically related to a plan of care designed by the physician. The ancillary services may include but are not limited to dietary, respiratory therapy services, and psychological services.

1. Dietary services must be of a level of complexity or sophistication, or the nature of the resident shall be of a nature that the services can only be performed or supervised by a dietician, registered with the American Dietetic Association.

2. Respiratory therapy services must be of a level of complexity and sophistication, or the nature of the resident shall be of a nature that the services can only be performed by a respiratory therapist. Respiratory therapy services must be provided by a respiratory therapist certified by the Board of Medicine or registered with the National Board for Respiratory Care. If the facility agrees to provide care to a resident who is dependent on mechanical assistance for respiration (positive or negative pressure mechanical ventilators), respiratory therapy services must be available 24 hours daily. If the facility contracts for respiratory therapy services, a respiratory therapist must be on call 24 hours daily and available to the facility in a timely manner.

3. Psychology services shall be of a level of complexity or sophistication, or the condition shall be of a nature that the services can only be performed by a psychologist licensed by the Board of Medicine *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* .

4. Activity programs under the supervision of designated activities coordinators. The program of activities must include both individual and group activities which are based on consideration of interest, skills, physical and mental status, and personal care requirements.

5. Provide social services to each resident in an effort to assist the resident, his family and the facility staff in understanding the significant social and emotional factors related to the health problems, to assist with appropriate utilization of community resources and to coordinate discharge plans. Social services must be

provided by a social worker with at least a bachelor's degree in social work or similar qualifications.

§ 6. Long-stay acute care hospital requirements.

A. A coordinated multidisciplinary team approach shall be implemented to meet the needs of the resident. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activity coordinators, dieticians, rehabilitative therapists, and any direct care staff.

B. The long-stay acute care hospital shall provide for the educational and habilitative needs of residents age 21 or younger. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must be individualized to meet the specific needs of the child and must be provided in an organized manner which encourages the child to participate. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. Therapeutic leisure activities must be provided daily.

C. The long-stay acute care hospital shall provide an acceptable plan for assuring that residents requiring long-stay acute hospital care are afforded the same opportunity for participating in integrated facility activities as the other facility residents.

D. Nonemergency transportation shall be provided so that residents may participate in community activities sponsored by the facility or community activities in which the facility is providing transportation for other facility residents.

E. The long-stay acute care hospital shall coordinate discharge planning for the resident utilizing all available resources in an effort to assist the resident to maximize his potential for independence and self-sufficiency and to assure that services are being provided by the most effective level of care.

F. The long-stay acute care hospital shall provide family or caregiver training in the skills necessary for the care of the resident in the community, should the resident or the resident's caregiver so desire.

G. The long-stay acute care hospital shall provide all necessary durable medical equipment to sustain life or monitor vital signs and to carry out a plan of care designed by the physician. This equipment may include but is not limited to mechanical ventilator, apnea monitor, etc.

H. The long-stay acute care hospital shall provide utilization review activities as follows:

1. Purpose. The objective of the utilization review mechanism is the maintenance of high-quality patient care and the most efficient utilization of resources through an educational approach involving the study of patient care as well as to ensure that inpatient care is provided only when medically necessary and that the care meets quality standards.

a. In addition to the certification by the resident's physician, the hospital shall have a utilization review plan which provides for review of all Medicaid patient stays and medical care evaluation studies of admissions, durations of stay, and professional services rendered.

b. Effective utilization review shall be maintained on a continuing basis to ensure the medical necessity of the services for which the program pays and to promote the most efficient use of available health facilities and services.

2. The Department of Medical Assistance Services delegates to the local facilities' utilization review departments the utilization review of inpatient hospital services for all Medicaid admissions. The hospital must have a utilization review plan reflecting 100% review of Medicaid residents, approved by the Division of Licensure and Certification of the Department of Health, and DMAS or the appropriate licensing agency in the state in which the institution is licensed.

3. The hospital utilization review coordinator shall approve the medical necessity, based on admission criteria approved by the utilization review committee, within one working day of admission. In the event of an intervening Saturday, Sunday, or holiday, a review must be performed the next working day. This review shall be reflected in the hospital utilization review plan and the resident's record.

4. If the admission is determined medically necessary, an initial stay review date must be assigned and reflected on the utilization review sheets. Continued or extended stay review must be assigned prior to or on the date assigned for the initial stay. If the facility's utilization review committee has reason to believe that an inpatient admission was not medically necessary, it may review the admission at any time. However, the decision of a utilization review committee in one facility shall not be binding upon the utilization review committee in another facility.

5. If the admission or continued stay is found to be medically unnecessary, the attending physician shall be notified and be allowed to present additional information. If the hospital physician advisor still finds the admission or continued stay unnecessary, a notice of adverse decision must be made within one working day after the admission or continued stay is denied. Copies of this decision must be sent by the utilization review committee's designated agent to the hospital administrator, attending physician, recipient or recipient's authorized representative, and Medicaid.

6. As part of the utilization review plan, long-stay acute care hospitals shall have one medical or patient care evaluation study in process and one completed each calendar year. Medical care evaluation studies must contain the elements mandated by 42 CFR 456.141 through 456.145. The elements are objectives of study, results of the study, evaluation of the results, and action plan or recommendations as indicated by study results.

7. The Department of Medical Assistance Services shall monitor the length of stay for inpatient hospital stays. The guidelines used shall be based on the criteria described in § 3 of these regulations. If the stay or any portion of the stay is found to be medically unnecessary, contrary to program requirements, or if the required documentation has not been received, reimbursement will not be made by Medicaid.

8. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

I. The long-stay acute care hospital shall provide all medical supplies necessary to provide care as directed by the physician's plan of care for the resident. These supplies may include but are not limited to suction catheters, tracheostomy care supplies, oxygen, etc.

J. The long-stay acute care hospital shall provide all nutritional elements including those that must be administered intravenously. This includes providing all necessary equipment or supplies necessary to administer the nutrients.

K. The long-stay acute care hospital shall submit all necessary health care and medical social service information on the resident to DMAS for preadmission authorization. The provider cannot bill DMAS for services that have not been preauthorized.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: Due to their length, the Virginia Hazardous Waste Management Regulations filed by the Department of Environmental Quality are not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, VA 23219, and at the Department of Environmental Quality, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, VA 23219.

Title of Regulation: **VR VR 672-10-1. Virginia Hazardous Waste Management Regulations.**

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

Public Hearing Date: May 20, 1993 - 2 p.m.
Written comments may be submitted through June 18, 1993.
(See Calendar of Events section for additional information)

Summary:

Proposed Amendment 13 incorporates the changes made by the United State Environmental Protection Agency on December 24, 1992, to those portions applicable to wood preservers. The changes affect the listing of hazardous wastes in contact with process wastes, eliminates the requirement for retrofitting existing drip pads, specifies the permeability rate for sealants or pads, provides alternatives for the construction of new drip pads, and establishes appropriate cleanup measures and plans for wood preservers. The amendment eliminates the requirements promulgated in Amendment 12 for upgrading existing drip pads as long as they comply with the performance standards.

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 AGRICULTURE AND CONSUMER SERVICES (COMMISSIONER OF)

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act pursuant to subdivision A 17 of § 9-6.14:4.1 of the Code of Virginia, which excludes from this Act the Commissioner and Board of Agriculture and Consumer Services when promulgating regulations pursuant to subsection A of § 3.1-884.21:1. The Board of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

Title of Regulation: **VR 115-02-19. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act.**

Statutory Authority: § 3.1-884.21:1 of the Code of Virginia.

Effective Date: March 25, 1993.

Summary:

For the purpose of establishing and maintaining a meat and poultry inspection program in Virginia, this regulation adopts certain federal meat and poultry inspection regulations by reference, making such changes therein as to give them intrastate effect. The regulation also establishes the criteria for setting fees and charges necessary to conduct the Virginia meat and poultry inspection program.

VR 115-02-19. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act.

PART I.
ADOPTION BY REFERENCE.

§ 1.1. Adoption by reference.

The rules and regulations governing the meat and poultry inspection of the United States Department of Agriculture specified in this part, as contained in Title 9, Chapter III, Subchapters A, B and C, Code of Federal Regulations, dated January 1, 1992, with amendments and with administrative changes therein as needed to make them appropriate and applicable to intrastate operations and transactions subject to the Virginia Meat and Poultry Products Inspection Act, are hereby adopted by reference.

~~SUBCHAPTER A~~

~~MEAT INSPECTION~~

~~The words and phrases as used in the referenced subchapter(s) shall retain their original meaning with the following exceptions unless the context otherwise requires. All Fees and Charges referenced in subchapters shall be as delegated by the Secretary.~~

~~Part 301. Definitions.~~

~~(a) The Department. (Shall mean) The Virginia Department of Agriculture and Commerce.~~

~~(b) The Act. (Shall mean) The Virginia Meat and Poultry Products Inspection Act (1970, C.290) as amended.~~

~~(c) Secretary. (Shall mean) The Commissioner of Agriculture and Commerce.~~

~~(d) Administrator. (Shall mean) the Director of the Division of Animal Health and Dairies, or any other officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.~~

~~(e) Program. (Shall mean) The Virginia Meat and Poultry Inspection Program.~~

~~(f) Commerce. (Shall mean) Commerce within the State of Virginia.~~

~~(g) Interstate. (Shall mean) Intrastate.~~

~~(h) Service. (Shall mean) The Virginia Meat and Poultry Inspection Service.~~

~~(i) Federally Inspected and Passed. (Shall mean) Virginia Inspected and Passed.~~

~~(j) "U.S." (Shall mean) "Virginia."~~

~~(k) U.S. Brands and Legends. (Shall mean) Virginia Brands and Legends.~~

~~(l) Federal. (Shall mean) Virginia.~~

§ 1.2. Definitions.

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

"Act" means the Virginia Meat and Poultry Products Inspection Act (§ 3.1-884.17 et seq. of the Code of

Virginia).

"Administrator" means the Director of the Division of Animal Health, or any other officer or employee of the department to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

"Commerce" means commerce within the Commonwealth of Virginia.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Federal" means "Virginia."

"Federally inspected and passed" means Virginia inspected and passed.

"Interstate" means intrastate.

"Program" means the Virginia Meat and Poultry Inspection Program.

"Secretary" means the Commissioner of Agriculture and Consumer Services.

"Food Safety Inspection Service" means the Virginia Meat and Poultry Inspection Service.

"United States" or "U.S." means "Virginia."

"U.S. Brands and Legends" means "Virginia Brands and Legends."

§ 1.3. Subchapter A – Mandatory meat inspection.

Part 302. Application of Inspection and Other Requirements.

Part 303. Exemptions.

Any establishment, firm, person or corporation operating under Section 303.1(a)(2) of this subchapter is required to apply for and receive a permit of exemption in accordance with requirements set forth by the Commissioner of Agriculture and ~~Commerce~~ *Consumer Services* or his delegate.

Part 304. Application for Inspection; Grant or Refusal of Inspection.

Part 305. Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violation.

Part 306. Assignment and Authorities of Program Employees.

Part 307. Facilities for Inspection.

Part 308. Sanitation.

Part 309. Ante Mortem Inspection.

Part 310. Post Mortem Inspection.

Part 311. Disposal of Diseased or Otherwise Adulterated Carcasses and Parts.

Part 312. Official Marks, Devices ~~,~~ and Certificates.

Part 313. Humane slaughter of livestock.

Part 314. Handling and Disposal of Condemned or Other Inedible Products at Official Establishments.

Part 315. Rendering or Other Disposal of Carcasses and Parts Passed for Cooking.

Part 316. Marking Products and Their Containers.

Part 317. Labeling, Marking Devices, and Containers.

Part 318. Entry Into Official Establishments; Reinspection and Preparation of Products.

Part 319. Definitions and Standards of Identity or Composition.

Part 320. Records, Registration , and Reports.

Part 325. Transportation.

Part 329. Detention ~~,~~ ; Seizure and Condemnation; Criminal Offenses.

~~SUBCHAPTER B~~
~~VOLUNTARY INSPECTION AND CERTIFICATION SERVICE~~

§ 1.4. Subchapter B – Voluntary inspection and certification service.

Part 350. Special Services Relating to Meat and Other Products.

Part 352. Exotic animals; voluntary inspection.

Part 354. Voluntary Inspection of Rabbits and Edible Products Thereof.

Part 355. Certified Products for Dogs, Cats, and Other Carnivora ~~,~~ ; Inspection , Certification, and Identification as to Class, Quality, Quantity , and Condition.

Part 362 - Voluntary Poultry Inspection Regulations.

~~SUBCHAPTER C~~
~~POULTRY INSPECTION – PART 381~~ .

~~Subpart A. Definitions:~~

~~The words and phrases used in this subchapter shall~~

~~retain their original meaning unless the context otherwise requires. All fees and charges referenced shall be as delegated by the Secretary.~~

§ 1.5. Subchapter C – Mandatory poultry products inspection.

Part 381. Poultry products inspection regulations.

Subpart B. Administration; Application of Inspection and Other Requirements. Deleting Section 381.5–Publications.

Subpart C. Exemptions.

Subpart D. Application for Inspection; Grant or Refusal of Inspection.

Subpart E. Inauguration of Inspection; Official Establishment Numbers; Separation of Establishments and Other Requirements; Withdrawal of Inspection.

Subpart F. Assignment and Authorities of Program Employees *; appeals* .

Subpart G. Facilities for Inspection; Overtime and Holiday Service; Billing Establishments.

Subpart H. Sanitation.

Subpart I. Operating Procedures.

Subpart J. Ante Mortem Inspection.

Subpart K. Post Mortem Inspection; Disposition of Carcasses and Parts.

Subpart L. Handling and Disposal of Condemned or other Inedible Products at Official Establishments.

Subpart M. Official Marks, Devices, and Certificates; Export Certificates; Certification Procedures.

Except as otherwise required in this subchapter all referrals and instructions relative to Export or Import are deleted from adoption.

Subpart N. Labeling and Containers.

Subpart O. Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements.

Subpart P. Definitions and Standards of Identity or Composition.

Subpart Q. Records, Registration , and Reports.

Subpart S. Transportation; Exportation; or Sale of Poultry or Poultry Products.

Subpart ~~V.~~ *U.* Detention; Seizure and Condemnation; Criminal Offenses.

PART II.
FEES AND CHARGES.

§ 2.1. Hourly charge.

In setting the hourly charge to be made by the Virginia Bureau of Meat and Poultry Inspection Services, the Department of Agriculture and Consumer Services may charge for voluntary, overtime, and holiday inspection, and administrative costs associated therewith. The amount charged will be sufficient to pay: (i) the salaries and benefits of inspection personnel providing voluntary, overtime, and holiday inspection services; and (ii) that portion of the salaries and benefits of any other employee or employees attributable to administrative services associated with voluntary, overtime, or holiday inspection.

§ 2.2. Mileage rate.

In setting the mileage rate, the Department of Agriculture and Consumer Services may charge a rate not to exceed that authorized by the Commonwealth of Virginia State Travel Regulations.

§ 2.3. Lodging rates.

In setting lodging rates, the Department of Agriculture and Consumer Services may charge a rate not to exceed that authorized by the Commonwealth of Virginia State Travel Regulations.

DEPARTMENT OF MOTOR VEHICLES

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Motor Vehicles will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 485-30-8601. Regulations Governing Grants to be made pursuant to the Virginia Alcohol Fuel Production Incentive Program Fund (REPEALED).**

Statutory Authority: § 58.1-2127.7 of the Code of Virginia.

Effective Date: May 19, 1993.

Summary:

The Department of Motor Vehicles is repealing VR 485-30-8601, Regulations Governing Grants to be made pursuant to the Virginia Alcohol Fuel Production Incentive Program Fund. These regulations are being repealed because the program, as set forth in Articl

3.1 (§ 58.1-2127.1 et seq.) of Chapter 21 of Title 58.1 of the Code of Virginia, does not provide for grants beyond June 30, 1992, thus eliminating the need for and the usefulness of these regulations.

BUREAU OF INSURANCE

March 25, 1993

Administrative Letter 1993 - 7

TO: All Insurance Companies, Health Services Plans, Health Maintenance Organizations, and Other Interested Parties

RE: Change of Address and Telephone Numbers for the State Corporation Commission's Bureau of Insurance

Please be advised that the State Corporation Commission's Bureau of Insurance has moved to the Tyler Building which is located at 1300 E. Main Street, Richmond, Virginia 23219.

Our mailing address remains P. O. Box 1157, Richmond, Virginia 23209.

The Bureau's toll-free hotline number for calls made within Virginia is still 1-800-552-7945. This number has not changed. Calls outside of Virginia, however, may now be directed to (804) 371-9741.

Please also make note of changes in the following numbers:

Agents Licensing - (804) 371-9631
Company Admissions - (804) 371-9636
Financial Examinations - (804) 371-9311
Financial Statements - (804) 371-9637
Life & Health Agent Investigations - (804) 371-9990
Life & Health Consumer Services - (804) 371-9691
Life & Health Forms & Rates - (804) 371-9110
Life & Health Market Conduct - (804) 371-9150
Property & Casualty Agent Investigations - (804) 371-9465
Property & Casualty Consumer Services - (804) 371-9185
Property & Casualty Forms & Rates - (804) 371-9965
Property & Casualty Market Conduct - (804) 371-9687
Surplus Lines Brokers - (804) 371-9399
Taxes and Assessments - (804) 371-9399

Each company is responsible for notifying its agents of these changes and for making the necessary corrections to all policies, forms, endorsements, and notices to policyholders issued on or after July 1, 1993, which contain the Bureau's street address and telephone number(s). No changes are necessary for the Bureau's mailing address and the toll-free hotline number. These changes should not be filed with the Bureau of Insurance.

Steven T. Foster
Commissioner of Insurance

AT RICHMOND, MARCH 19, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. PUE930015

STATE CORPORATION COMMISSION

Ex Parte: In Re: Investigation into the Effects of Wholesale Power Purchases on Utility Cost of Capital; Effects of Leveraged Capital Structures on the Reliability of Wholesale Power Sellers; and Assurance of Adequate Fuel Supplies

ORDER ESTABLISHING COMMISSION INVESTIGATION

The 102d Congress of the United States adopted the Energy Policy Act of 1992 (the "Act") on October 24, 1992. Section 712 of the Act adds an additional provision, Paragraph (10) and subsections, to Section 111 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2621 ("PURPA"). This provision requires the various state utility regulatory authorities, including this Commission, to "perform a general evaluation of:"

(i) the potential for increases or decreases in the costs of capital for such [electric] utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

(ii) whether the use by exempt wholesale generators (as defined in Section 32 of the Public Utility Holding Company Act of 1935) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

Paragraph (10)(C) of the Act provides that, as a result of performing the evaluations noted above, a state regulatory authority may take "action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest."

Paragraph (10)(D) of the Act requires each state regulatory authority to "consider and make a

determination concerning the standards of subparagraph (A)[.]" Paragraph (10)(E) requires that this proceeding be concluded within one year from the passage of the Act. The Commission must conclude its investigation no later than October 24, 1993.

Section 111(b)(1)(a) of PURPA requires our consideration to be made after public notice and hearing. Finally, Rule 4:12 of the Commission's Rules of Practice and Procedure ("Rules") requires that before promulgating any general order, rule or regulation, the Commission "shall give reasonable notice of its contents and shall afford interested persons having objections thereto an opportunity to present evidence and be heard."

Accordingly, by this Order we will initiate an investigation to consider rules, if appropriate, or Commission policy regarding the effects of wholesale power purchases on utility cost of capital, the effects of leveraged capital structures on the reliability of wholesale power sellers, whether to implement advance approval or disapproval of long-term wholesale power purchases, and whether to require reasonable assurances of fuel supply delivery for such wholesale power sellers, as required by the Act.

Because of the procedural requirements of the Act and our Rules, this investigation must proceed in two phases. First, interested parties will be asked to comment upon the issues and matters set forth above. Next, the Commission Staff will consider the received comments and file testimony incorporating its recommendation as to "whether it is appropriate to implement the standards set out in subparagraph (A)" of the Act and, if so, whether to do so by specific rule or by specific policy pronouncement.

Following this initial phase of the investigation, the Commission will convene a public hearing to take evidence upon the recommendations set forth in the Staff testimony. The Commission will issue further procedural orders prior to this phase of the investigation.

Accordingly, IT IS ORDERED:

(1) That this matter shall be docketed and assigned Case No. PUE930015;

(2) That any person may file written comments provided an original and fifteen (15) copies of the comments are filed no later than April 21, 1993, with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. Such comments must refer to Case No. PUE930015;

(3) That the Commission Staff shall file its testimony on or before June 1, 1993, in which it sets forth its findings and recommendations and proposed rules or policy pronouncements, if any;

(4) That all investor-owned electric companies and electric cooperatives subject to the Commission's jurisdiction shall forthwith make a copy of this order available for public inspection during normal business hours at the respective business offices where utility bills may be paid;

(5) That all investor-owned electric companies and electric cooperatives subject to the Commission's jurisdiction shall forthwith serve a copy of this Order, by delivering a copy to the usual place of business or by depositing a copy in the United States mail, properly addressed and stamped, to all non-utility generators who currently provide or have offered to provide energy or capacity to the utility; and

(6) That this matter shall be continued until further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all electric companies and cooperatives in the State of Virginia; Kendrick R. Riggs, Esquire, P.O. Box 26666, Richmond, Virginia 23261; Evans Brasfield, Esquire, Hunton & Williams, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Edward L. Petrini, Esquire, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Dennis R. Bates, Esquire, Office of the County Attorney, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Fairfax, Virginia 22035-0064; Fredrick H. Ritts, Philip Morris USA, Watergate 600 Building, #915, Washington, DC 20037-2474; David B. Kearney, City of Richmond, 900 East Broad Street, #300, Richmond, Virginia 23219; Denise Water Bland, Virginia Citizens Consumer Council, P.O. Box 8795, Williamsburg, Virginia 23187; Donald R. Hayes, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; Frann G. Francis, Esquire, Apartment and Office Building Association, 1050 17th Street, N.W., #300, Washington, DC 20036; Louis R. Monacell, Virginia Committee for Fair Utility Rates, 1200 Mutual Building, Richmond, Virginia 23219; Edward L. Flippen, Esquire, P.O. Box 1122, Richmond, Virginia 23208-1122; Oliver A. Pollard, III, Esquire, 201 West Main Street, #14, Charlottesville, Virginia 22901; Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219-4030; T. Randolph Perkins, Cogentrix, Inc., 9405 Arrow Point Boulevard, Charlotte, North Carolina 28217; Laurence M. Hamric, Doswell, Two James Center, 1021 East Cary Street, Richmond, Virginia 23210, Beverly Crump, Esquire, McSweeney, Burtch & Crump, 11 South 12th Street, Richmond, Virginia 23219; Thomas L. Bowden, Ecopower, Inc., 1309-11 East Cary Street, Richmond, Virginia 23219; Wayne S. Leary, Peat Energy, Inc., 1006 Albemarle Court, New Bern, North Carolina 28562-2502; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; John Sachs, Esquire, 1701 Pennsylvania Avenue, N.W., Washington, D.C. 20006; George A. Beadles, Jr., 9401 Deer Range Road, Mosley, Virginia 23120-1432; G. Philip

Nowack, Esquire, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036; Harry E. Gregori, Jr., Department of Waste Management, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219; Philip F. Abraham, Coastal Power Production, P.O. Box 3-K, Richmond, Virginia 23206; and Wallace N. Davis, Executive Director, Department of Air Pollution Control, Commonwealth of Virginia, Room 801, Ninth Street Office Building, P.O. Box 10089, Richmond, Virginia 23240.

DIRECTOR'S ORDER NUMBER THIRTEEN (89)

VIRGINIA LOTTERY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE ON-LINE RETAILER LICENSING PROGRAM

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia Lottery Minority and Women-Owned Business Enterprise On-Line Retailer Licensing Program. This program is established to encourage and promote the licensing of businesses owned by members of these groups. The details within the program amplify and conform to the duly adopted State Lottery Board regulations for the conduct of on-line games.

The program is 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: Public Information Officer, 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: July 10, 1989

FINAL REGULATION

STATE LOTTERY DEPARTMENT

Title of Regulation: **VR 447-02-2. On-Line Game Regulations.**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Effective Date: May 19, 1993.

Summary:

The amendments to § 3.1 reduce the potential of the purchase of large blocks of on-line lottery tickets by stipulating that all playslips used must be manually marked. The amendments also stipulate that a person who is physically handicapped and who would otherwise be unable to mark a playslip manually may use any device to make such a mark for his sole personal use or benefit.

This regulation supersedes an emergency regulation effective June 4, 1992.

VR 447-02-2. On-Line Game Regulations.

PART I.
ON-LINE GAMES.

§ 1.1. General definitions for on-line games.

The words and terms, when used in any of the department's regulations, shall have the same meaning, as defined in these regulations, unless the context clearly indicates otherwise. Definitions that relate to instant games are incorporated by reference in the On-Line Game Regulations (VR 447-02-2).

"Auto pick" means the same as "easy pick."

"Breakage" means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.

"Cancelled ticket" means a ticket that (i) has been placed into the terminal, whereupon the terminal must read the information from the ticket and cancel the transaction or (ii) whose validation number has been manually entered into the terminal via the keyboard and cancelled.

"Certified drawing" means a drawing in which a lottery official and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Confirmation (or registration) notice" means the subscription notification letter or card mailed to the subscriber which confirms the game numbers for the game panel played, and the plan start date and number of draws.

"Drawing" means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).

"Duplicate ticket" means a ticket produced by any means other than by an on-line terminal with intent to imitate the original ticket.

"Easy pick" means computer generated numbers or items.

"Game panel" means the play(s) entered on a playslip by the player or by the subscriber on the subscription application.

"Game numbers" means the numbers designated by the player on the playslip or subscription application or the computer-generated numbers if easy pick is selected.

"Group-designated agent" means the individual listed on the back of a ticket or on the subscription application who is elected by the group of players to act as the representative or subscriber on the group's behalf in

handling all correspondence and payment disbursements resulting from the group's activity.

"Number of draws" means the actual number of draws for which a multiple play or subscription is valid.

"On-line game" means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct communication with an on-line game main frame operated by or at the direction of the department.

"On-line lottery retailer" means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets at a specific location.

"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

"On-line terminal" means the department's computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.

"On-line ticket" means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Person" means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

"Plan" means the duration of the subscription as determined by the number of draws designated by the subscriber on the subscription application or renewal notice.

"Play" means a wager on a single set of selected numbers.

"Player-selected item" means a number or item or group of numbers or items selected by a player in connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as "auto picks," "easy picks" or "quick picks."

"Playslip" means an optically readable card issued by the department, used in marking a player's game plays.

"Present at the terminal" means that a player remains physically present at the on-line lottery terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.

"Quick pick" means the same as "easy pick."

"Registration" means the process of entering subscripton information concerning the subscriber, plan and selected numbers into the central computer system.

"Retailer," as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

"Roll stock" or *"ticket stock"* means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

"Share" means a percentage of ownership in a winning ticket or subscription plan.

"Start date" means the first draw date for which a multiple play or subscription is effective.

"Subscriber" means the individual designated on the subscription application whose entry has been entered into the department's central computer system and who has received confirmation from the department of his designated numbers and includes the group-designated agent for a group, organization, family unit, or club.

"Subscription" means a method to play a lottery on-line game by purchasing subscription plays, using a designated set of numbers, for a specific period of time, and for which the player is automatically entered in each drawing or game during the period for which the subscription is effective.

"Subscription application" means the form(s) used by an individual or group-designated agent to play lottery games by subscription.

"Subscription renewal" means the process by which a subscription plan is renewed by the subscriber in accordance with procedures established by the department.

"Winning combination" means two or more items or numbers selected by a drawing.

§ 1.2. Development of on-line games.

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games,

2. Individual prize amounts and overall prize structure,

3. Types of noncash prizes, if any,

4. The amount and type of any jackpot or grand prize which may be awarded and how awarded, and

5. Chances of winning.

§ 1.3. Prize structure.

The prize structure for any on-line game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

§ 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules. That time will be designated by the director.

§ 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. Unless authorized by the board, lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

B. This section shall not apply to the redemption of a winning on-line game ticket the prize for which is another free ticket.

§ 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.

2. Cancellation may only be effected by the following two procedures:

a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.

b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error or if the ticket was issued by another lottery-approved device. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

§ 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

§ 1.8. Licensed retailers' compensation.

A. Licensed retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system by administrative order. The director may then award such cash bonuses or other incentives to retailers. Retailers may not accept any compensation for

the sale of lottery tickets other than compensation approved under this section, regardless of the source.

§ 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise. Retailers shall give prompt service to lottery customers present and waiting at the terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of on-line ticket orders for which the customer is not present at the terminal. Failure to render prompt service to lottery customers may result in administrative action by the director including but not limited to license suspension or revocation or disabling the on-line terminal so that it will not process transactions.

E. Tickets shall be sold only at the location listed on each retailer's license from the department. For purposes of this section, the sale of an on-line lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the licensee and the player shall take place on site at the lottery terminal including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the ticket. No part of the sale may take place away from the lottery terminal.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, given as a gift to or redeemed from any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize.

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by the manager or supervisor in charge at the location where the tickets are being sold.

L. Federal Internal Revenue Code, 26 U.S.C. 60501 requires lottery retailers who receive more than $10,000 in cash in one transaction, two or more related transactions in the aggregate, or a series of connected transactions exceeding $10,000 in the aggregate, from a single player or his agent, to file a Form 8300 with the Internal Revenue Service. IRS encourages retailers to report all suspicious transactions, even if they do not meet the $10,000 threshold. "Cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments not customarily accepted as money.

§ 1.10. End of game; suspension.

The director may suspend or terminate an on-line game without advance notice if he finds that this action will serve and protect the public interest.

PART II.
LICENSING OF RETAILERS FOR ON-LINE GAMES.

§ 2.1. Licensing.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

§ 2.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;

2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or

3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

§ 2.3. General standards for licensing.

A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and integrity of the retailer, to include:

a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;

b. A check for outstanding delinquent state tax liability;

c. A check for required business licenses, tax and business permits; and

d. An evaluation of physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to public, to include:

a. The hours of operation compared to the on-line system selling hours;

b. The availability of parking including ease of ingress and egress to parking;

c. Public transportation stops and passenger traffic volume;

d. The vehicle traffic density, including levels of congestion in the market area;

e. Customer transaction count within the place of business;

f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and

g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected impact on sales volume of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and

d. The population to terminal ratio, compared to other geographical market areas.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of the business;

c. Sales history of the market area;

d. Sales history for instant tickets, if already licensed as an instant retailer;

e. Volume of customer traffic in place of business; and

f. Market area potential, compared to other market areas.

5. The ability to offer high levels of customer service to on-line lottery players, including:

a. A history demonstrating successful use of lottery product related promotions;

b. Volume and quality of point of sale display;

c. A history of compliance with lottery directives;

d. Ability to display jackpot prize amounts to pedestrians and vehicles passing by;

e. A favorable image consistent with lottery standards;

f. Ability to pay prizes of $600 or less during

maximum selling hours, compared to other area retailers;

g. Commitment to authorize employee participation in all required on-line lottery training; and

h. Commitment and opportunity to post jackpot levels near the point of sale.

B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line retailer. The forms to be submitted shall include:

1. Signed retailer agreement;

2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and

3. Executed bond requirement.

§ 2.4. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of $10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to $10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of $10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and

2. Submit the surety company's letter or certificate with the required annual license review fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

E. Limit on sales in excess of bond.

Under no circumstances shall the retailer allow total, weekly, net on-line and instant sales from a single location for the seven-day period ending at the close of the lottery fiscal week (normally Tuesday night) to exceed five times the amount of the bond for that licensed location, unless such retailer has first obtained written permission from the director. The director, in his sole discretion, may require additional bond or other security as a condition for continued sales, may accelerate the collection from the retailer of the net proceeds from the sale of lottery tickets, or may temporarily suspend the requirement that no retailer may sell lottery tickets in excess of five times the amount of the bond for that licensed location for all on-line lottery retailers or for individual retailers on a case-by-case basis.

§ 2.5. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

§ 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's on-line terminal will be inactivated. The retailer will not be reactivated until payment is made by cashier's check, certified check or wire transfer, and if deemed a continuing credit risk by the department, not until an informal hearing is held to determine if the licensee is able and willing to meet the terms of his license agreement. Additionally, interest will be charged on the moneys due plus a $25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

C. Service charge for dishonored EFT transfer or bad check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of $25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

E. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

§ 2.7. License term and annual review.

A. License term.

A general on-line license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

B. Annual license review.

The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual

license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Amended license term.

The annual fee for an amended license will be due on the same date as the fee for the license it replaced.

D. Special license.

The director may issue special licenses. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. On-line game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

E. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

§ 2.8. License fees.

A. License fee.

The fee for a lottery retailer general license to sell on-line game tickets shall be $25. Payment of this fee shall entitle the retailer to sell both on-line and instant game tickets. The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

B. Annual license fee.

The annual fee for a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a retailer's anniversary date.

C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

§ 2.9. Fees for operational costs.

A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be $275 unless otherwise determined by the director. This fee may be subject to change based upon an annual cost review by the department.

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of $25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

B. Weekly on-line telecommunications line charge.

Each retailer shall be assessed a weekly charge of $15 per week. This fee may be subject to change based upon an annual cost review by the department.

§ 2.10. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;

2. Change in business structure (e.g., from a partnership to a sole proprietorship); or

3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

§ 2.11. Denial, suspension, revocation or of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;

2. The person has been convicted of a crime involving moral turpitude;

3. The person has been convicted of any fraud or misrepresentation in any connection;

4. The person has been convicted of bookmaking or other forms of illegal gambling;

5. The person as been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;

6. The person's place of business caters to or is frequented predominantly by persons under 18 years of age;

7. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

8. The nature of the person's business is not consonant with the probity of the Commonwealth; or

9. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to continue license.

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for on-line terminal ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards;

11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age;

12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; or

13. The nature of the person's business is not consonant with the probity of the Commonwealth.

E. Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for

requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

§ 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

§ 2.13. Display of license.

License displayed in general view. Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 2.14. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been approved for use by the department.

§ 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

§ 2.16. Examination of records; seizure of records.

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

§ 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

§ 2.18. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

§ 2.19. Training of retailers and their employees.

Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

§ 2.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the

retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART III.
ON-LINE TICKET VALIDATION REQUIREMENTS.

§ 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.

2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.

3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)

4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.

5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.

6. The ticket shall not have been cancelled.

7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)

8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.

9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.

10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.

11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.

12. The ticket shall pass all other confidential security checks of the department.

13. Any on-line lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

14. Playslips may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other automated device. Any playslip marked by methods other than those authorized by these regulations is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a playslip manually from using any device intended to permit such person to make such a mark [for his sole personal use or benefit] .

§ 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

§ 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

§ 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

§ 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

§ 3.6. Prize winning tickets.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

§ 3.7. Unclaimed prizes.

A. Except for free ticket prizes, all claims for on-line game winning tickets must be postmarked or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.

B. Any on-line lottery cash prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admissions to events and the like.

C. All claims for on-line game winning tickets for which the prize is a free ticket must be postmarked or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day. This section does not apply to the redemption of free tickets awarded through the subscription program. (see § 4.14)

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

§ 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless authorized by the director.

§ 3.9. No prize paid to people under 18.

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket to any person ineligible to purchase a ticket is ineligible to receive any prize.

§ 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations. Licensed on-line retailers are authorized and required to make payment of all validated prizes of $600 or less.

§ 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

§ 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is $601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate the individuals in whose names the claim shall be entered and those persons' social security numbers shall be furnished.

E. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate judicial order.

§ 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the

terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

§ 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

§ 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize.

§ 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

§ 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

§ 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

§ 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

§ 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

§ 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

§ 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an on-line game ticket the prize for which is a free ticket.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;

2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

§ 3.23. Retailer to pay all prizes of $600 or less.

Prizes of $600 or less shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

§ 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for all prizes of $600 or less during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.

4. Prize claims shall be payable only at the location specified on the license.

5. The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

§ 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

§ 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

§ 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

§ 3.28. Prizes of $600 or less.

A retailer shall pay on-line prizes of $600 or less won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of $600 or less.

§ 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the signed ticket and a completed claim form to the department regional office or mail both the signed ticket and a completed claim form to the department central office.

2. If a ticket holder is unable to return to any on-line retailer to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

3. If the prize amount is $601 or more, the ticket holder may present the signed ticket and a completed claim form at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

§ 3.30. Prizes of $25,000 or less.

Prizes of $25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.31. Prizes of more than $25,000.

Prizes of more than $25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director consistent with § 1.1 of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 3.33. When prize payable over time.

Unless the rules for any specific on-line game provide otherwise, any cash prize of $100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

§ 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest $1,000 to facilitate purchase of an appropriate funding mechanism.

§ 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

§ 3.36. When claims form required.

A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of $601 or more from the department's regional offices. This section does not apply to the redemption of prizes awarded through a subscription plan as identified in § 4.14.

§ 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

1. If the claim is not valid, the department will promptly notify the ticket holder.

2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

A. When paying any prize of $601 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service; and

2. Withhold federal and state taxes from any winning ticket in excess of $5,001.

B. Additionally, when paying any prize of $101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's Set-Off Debt Collection Program.

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

PART IV.
SUBSCRIPTION PLAN.

§ 4.1. Development of subscription.

In addition to regulations set forth in this part, the conduct of subscriptions is subject to all applicable rules and regulations of the department.

§ 4.2. Subscriptions.

Subscriptions may be purchased for periods specified by the department in rules applicable to the lottery game to which the subscription applies.

§ 4.3. Subscription price.

The sale price of a subscription shall be determined by the board.

§ 4.4. Subscription cancellation.

A. A subscription entered into the department's central computer system cannot be cancelled by a subscriber or group-designated agent except when a subscriber or group-designated agent becomes employed by the lottery as an employee, board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer or employee during the subscription period.

B. A subscription cannot be assigned by a subscriber or group-designated agent to another person.

C. Funds remitted to the department as payment for the subscription are not refundable to the subscriber or group-designated agent unless provisions identified in subsection A of this section are present.

§ 4.5. Effective date.

The subscription shall be effective on the start date indicated in the confirmation notice for that subscription.

§ 4.6 Retailer compensation.

Active licensed lottery retailers shall receive 5.0% compensation on sales of subscriptions. The compensation shall be based on all subscriptions purchased at any active licensed lottery retailer location as well as on all subscription applications mailed or delivered to the department's central office with payment and bearing a valid licensed lottery retailer number. In addition, active licensed lottery retailers shall be compensated for renewals of subscriptions which originated at their retailer location. Retailer compensation for a subscription shall be cancelled in the event the tender for the subscription payment is not honored by the payor institution or if the licensed lottery retailer does not provide the retailer number.

§ 4.7. Validation requirements.

Only those subscriptions entered into the department's central computer system and which are confirmed are valid entries eligible for prizes. Otherwise, game numbers selected on a subscription application are not eligible to win a prize in any drawing.

§ 4.8. Purchase of subscription.

A. Subscription applications may be distributed through the department's central office, any department regional office, any licensed lottery retailer, or any other means as determined by the department.

B. An individual, group, family unit, club, or other organization otherwise eligible to purchase lottery tickets may purchase a subscription by mail from the department's central office or from other locations as determined by the department.

C. In order to purchase a subscription, an individual, group, family unit, club, or other organization must furnish a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations.

D. After receipt of the subscription at the department's central office, the subsequent entry of data into the central computer system, and the bank clearance of the subscriber's method of payment, the department shall mail a confirmation notice to the subscriber or group-designated agent at the address provided on the subscription application.

§ 4.9. Subscription application requirements.

A. A subscription application must meet the following requirements in order to be accepted for entry:

1. The numbers selected by the player must contain the prescribed number of unduplicated game numbers from numbers available for play in the game. If permitted by the rules of the game, numbers may be duplicated;

2. The subscription application must contain a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations;

3. If a subscription is entered for a group, corporation, family unit or club, one individual must be designated as the group agent;

4. The subscription application must be an official department application; and

5. The designated numbers selected by the player or group-designated agent for a subscription shall remain unchanged for the duration of the subscription once the designated numbers are entered into the department's central computer system and confirmed by the player. If any easy pick option is selected by the player, the randomly-selected numbers shall remain unchanged for the duration of the subscription.

B. A subscription application will be rejected for any of the following reasons:

1. If a subscription application is received by the department on an unofficial subscription form;

2. If no numbers are designated in a selected game panel and an available easy pick option is not selected;

3. If more or fewer than the prescribed set of numbers are selected;

4. If numbers are duplicated within the game panel, unless permitted by game rules;

5. If both a prescribed set of numbers and easy pick is designated in the same game panel;

6. If payment is not for the correct amount and is not made payable to the "Virginia Lottery," if a check or money order is returned unpaid, if a third-party check is remitted for payment, or if remittance is dishonored, the registration and the confirmation notice are void automatically for all drawings including those which may have occurred prior to the remittance being dishonored;

7. If the application contains an out-of-state address;

8. If the application is not signed;

9. If an individual (subscriber, group-designated agent or recipient) is under the age of 18, according to birth date recorded on the application; or

10. If an individual is found to be a Virginia Lottery Department employee, vendor employee, or household member, otherwise prohibited from playing any lottery game.

C. If the subscription is rejected by the department, both the subscription application and subscription payment will be returned to the subscriber or group-designated agent with a letter of explanation and no prize will be paid on any play appearing on the rejected subscription application for any drawing deriving from that subscription application.

These regulations assume that an easy pick option is available. If not available in a subscription plan, the criteria for accepting or rejecting a subscription application is modified accordingly.

§ 4.10. Subscription gifts.

A. Any recipient of a subscription gift must have a valid Virginia address or Virginia post office box.

B. Numbers selected by the subscriber for the recipient cannot be cancelled or reselected.

C. All other provisions of these regulations shall apply to subscription gifts, subscription purchasers and subscription recipients.

§ 4.11. Subscription renewals.

A. Approximately six weeks prior to the end of a subscription, a renewal notice will be mailed to a subscriber or group-designated agent at the address on file with the department. Subscribers or group-designated agents may renew the subscription by returning the renewal notice with payment to the department's central office. Renewal notices may be obtained from the department's central office or other locations as determined by the lottery. Renewal notices shall not be mailed to subscribers or group-designated agents who no longer have a valid Virginia address or Virginia post office box.

B. Renewals will not be accepted unless the individual subscriber or group-designated agent furnishes a valid Virginia address or Virginia post office box.

§ 4.12. Change of name.

In the event a subscriber or group-designated agent's name changes during the subscription period, he may notify the department in writing of such change. Proof of name change may be required by the department at any time. The department reserves the right to refuse to change a name registered as a subscriber.

§ 4.13. Change of address.

In the event a subscriber or group-designated agent moves out of state during the subscription period and notifies the department of the change of address, the subscription will remain in effect until the number of draws for that subscription plan has expired. The subscriber or group-designated agent will not be eligible to receive a subscription renewal notice.

§ 4.14. Payment of prizes.

A. Before any prize of $601 or greater can be paid, the department must be provided with the subscriber's taxpayer identification number, if it has not already been provided on the subscription application. The department will make reasonable efforts to obtain the missing taxpayer identification number. Payment will be delayed until the number is provided. Prizes for which no taxpayer identification number has been furnished within 180 days of the date of the drawing in which the prize was won will be forfeited.

B. The department will monitor subscriptions and mail nonannuitized prize payments to subscription winners without the necessity of a claim form being filed by the subscription winners. Prizes shall be subject to payment of any taxes and Set-Off Debt Collection Act amounts due and the department shall deduct applicable taxes and set-off debt amounts prior to mailing prize payments.

C. Subscribers winning a free play will receive a check as payment of free ticket prize(s) from the department at the end of their subscription(s). In lieu of awarding free tickets to a subscriber or group-designated agent, the check will pay the cumulative value of all free tickets won during the subscription plan. The value of free play tickets won on a subscription shall be the same as the purchase price for a single-play, on-line ticket in the same game as determined by the board.

D. The department will notify subscription winners of annuitized prizes by certified mail or telephone, at the address or telephone number shown on the subscription application on file with the department, and request that they come to the department's central office to receive the first prize payment. Subsequent checks will be mailed to subscription winners. Claim forms for annuitized prizes will not be required.

E. Prize payments will be processed in the name of an individual or group-designated agent according to information furnished on the subscription application.

1. A group, family unit, club or other organization which is not a legal entity or which does not possess

a Federal Employer's Identification Number (FEIN) may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and are taxable.

2. If the prize winner does not furnish a social security number or taxpayer identification number, the prize will be deemed unclaimed and the department will not pay the prize. Failure to furnish the social security number or taxpayer identification number may expose the prize winner(s) to the risk that the prize will remain unclaimed after 180 days from the date of the drawing and will be forfeited.

F. If for any reason a payment is returned by the U.S. Postal Service and a new address cannot be located, such payments will be held by the department under the state's unclaimed property laws and transferred to the state if not claimed within 180 days following the drawing. Thereafter the department shall not be liable for payment and winners who make claims after this time period will be referred to the Unclaimed Property Division, Virginia Department of the Treasury.

G. Any subscription cash prize which remains unclaimed for any reason other than the preceding subsection after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. This includes, but is not limited to, failure or refusal to furnish a taxpayer identification number to complete the claim for a prize won.

§ 4.15. Player responsibility.

A. The department is not liable for department or licensed lottery retailer employee errors.

B. The player(s) assumes responsibility for any delays resulting from the choice of method of forwarding a subscription application to the department.

C. The subscriber or group-designated agent is responsible for verifying the accuracy of the lottery game data as recorded on the confirmation notice mailed to the subscriber or group-designated agent by the department.

D. The player shall notify the department if an error has been made. Notification shall be postmarked within 10 business days of date of the confirmation notice.

E. Player-requested corrections are not effective until entry of the corrected data into the department's central computer system and a corrected confirmation notice is mailed to the subscriber by the department. Such corrections are not retroactive. Any errors in lottery game data remain valid for all drawings occurring while the erroneous data remains effective but such erroneous game data is no longer valid for drawings occurring after the erroneous data is corrected and a corrected confirmation notice is issued.

§ 4.16. Department responsibility.

A. The department is responsible for entering the subscription data, including authorized corrections, on the department's central computer system within a reasonable period of time from receipt of the subscription application and clearance of remittance or receipt of the Request for Corrections notice.

B. If for any reason a subscription play is not accepted, the liability of the department and its retailers is limited to a refund of the purchase price for that play.

§ 4.17. Disputes.

A. The department is neither liable for nor has it any responsibility to resolve disputes among group members for group subscriptions.

B. The decision of the director shall be final.

NOTICE: The forms used in administering the State Lottery Department On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

On-Line Game Survey (SLD-120)
Retailer Data Collection
Lottery Retailer Surety Bond
Retailer Agreement Form (SLD-0064, 10/92, revised)
Virginia Lottery Licensed Retailer Certificate (4/90)
Things to Do
Commonwealth of Virginia Lottery Bond Application
Special Notice on Bonding for Lottery Retailers
Virginia Lottery On-Line Play Center; Agreement/Order Form (SLD-0136, 4/89)
On-Line Authorization Agreement for Preauthorized Payment
On-Line Ticket Stock Return (X-0120, 6/89)
On-Line Weekly Settlement Envelope (SLD-0127)
Weekly Settlement Form
A/R Online Accounting Transaction Form (X-0105, 6/89)
Cash Tickets Envelope/Cancelled Tickets Envelope
Ticket Problem Report
Winner Claim Form (SLD-0007, 3/89)
Winner-Gram
We're Sorry But.....
Subscription Playslip
Confirmation Letter
Statement by Person(s) Receiving Gambling Winnings (Form 5754)
Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300, 3/92)
Agreement to Share Ownership and Proceeds of Lottery Ticket

EMERGENCY REGULATION

MARINE RESOURCES COMMISSION

Title of Regulation: **VR 450-01-0087. Unloading Point for Relaying Shellfish.**

Statutory Authority: § 28.2-210 of the Code of Virginia.

Effective Dates: April 1, 1993, to May 1, 1993.

Preamble:

This regulation establishes a location where shellfish taken from a condemned shellfish growing area may be unloaded ashore.

VR 450-01-0087. Unloading Point for Relaying Shellfish.

§ 1. Authority, effective date.

A. This emergency regulation is promulgated pursuant to the authority contained in §§ 28.2-210, 28.2-801, and 28.2-819 B of the Code of Virginia.

B. The effective date of this regulation is April 1, 1993.

§ 2. Designated area.

Shellfish taken from private grounds in Willoughby Bay may be unloaded at F.D. Hunt's dock on Sunset Creek in Hampton.

§ 3. Expiration date.

This regulation shall terminate on May 1, 1993.

/s/ William A. Pruitt
Commissioner

EXECUTIVE ORDER NUMBER SIXTY-FIVE (93)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM HEAVY SNOWFALL, HIGH WINDS AND EXTREMELY LOW TEMPERATURES IN ALL PARTS OF VIRGINIA AND THE NEED TO OPERATE SHELTERS

On March 12-14, 1993, extremely low temperatures and heavy snowfall accompanied by high velocity winds, sleet and freezing rains fell over the entirety of the Commonwealth. The deep snow, resulting drifts and windy and icy conditions, made roads impassible, stranding hundreds of motorists, and marooning thousands of persons in their homes without electric power or heat. Rescue evacuations of these citizens are necessary to place them in public shelters as soon as possible. Food and medical supplies must be airlifted into stricken areas as soon as the weather permits. Large amounts of damage to public and private buildings has occurred as a result of the heavy snow accumulation. Due to the above life-threatening conditions, I verbally declared on March 12, 1993 a state of emergency to exist throughout the Commonwealth in order for rescue and relief operations to be facilitated.

The health and general welfare of the citizens of the affected jurisdictions in the area described above require that state action be taken to help alleviate the conditions which are a result of this situation. I find that this heavy snowfall, high winds and general wintry conditions constitute an emergency, as contemplated under the provisions of Section 44-146.16 of the Code of Virginia, wherein there is a potential for human suffering. I also find that these wintry conditions constitute a natural disaster wherein human life is imperiled, as contemplated by Section 44-75.1 (4) of the Code of Virginia.

Therefore, by virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Services, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by Section 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby confirm, ratify and memorialize in writing my verbal orders issued March 12, 1993, wherein I proclaimed that a state of emergency exists in the affected areas of the Commonwealth and directed that appropriate assistance be rendered by the agencies of the state and local governments to alleviate these conditions. Pursuant to Section 44-75.1 (4) of the Code of Virginia, I also directed that the Virginia National Guard be called forth to assist in providing such aid, as may be required by the Coordinator of the Department of Emergency Services, in consultation with the Secretary of Public Safety and the Adjutant General of Virginia.

The following conditions apply to the employment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Services and with the approval of the Secretary of Public Safety, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may be desirable to assist in alleviating the human suffering and damage to property as a result of the heavy snow and wintry conditions.

2. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by Section 44-78.1 of the Code of Virginia and not subject to the civilian authorities of the state or local governments.

3. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

4. The cost incurred by the Department of Military Affairs in performing this mission shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 555 of Chapter 893 of the 1992 Acts of Assembly, with any reimbursement thereof from nonstate agencies for partial or full reimbursement of this cost to be paid to the general fund of the state treasury.

This Executive Order shall be retroactively effective to

March 12, 1993, upon its signing, and shall remain in full force and effect until June 30, 1993, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 17th day of March, 1993.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-05-01. Regulations Governing Grade "A" Milk.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 24, 1993

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-40-600. Regulations for the Conduct of Human Research.**

Governor's Comment:

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Title of Regulation: **VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 25, 1993

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-35-01. Voluntary Registration of Small Family Day Care Homes–Requirements for Providers.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

DEPARTMENT OF TAXATION

Title of Regulation: **VR 630-3-414. Corporation Income Tax: Sales Factor.**

Governor's Comment:

I do not object to the initial draft of this regulation. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. Additionally, I recommend that the Department of Taxation consider the suggestions made by the Department of Planning and Budget to clarify language in the proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: March 24, 1993

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Title of Regulation: **VR 630-3-419. Corporation Income Tax: Construction Corporation; Apportionment.**

Governor's Comment:

I do not object to the initial draft of this regulation. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder

Governor
Date: March 24, 1993

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Title of Regulation: **VR 630-10-73. Retail Sales and Use Tax: Newspapers, Magazines, Periodicals and Other Publications.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 24, 1993

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Title of Regulation: **VR 630-10-74. Retail Sales and Use Tax: Nonprofit Organizations.**

Governor's Comment:

I do not object to the initial draft of this regulation. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. Additionally, I recommend that the Department of Taxation consider the suggestions made by the Department of Planning and Budget to clarify language in the proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: March 24, 1993

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Title of Regulation: **VR 630-10-80. Retail Sales and Use Tax: Penalties and Interest.**

Governor's Comment:

I do not object the initial draft of this regulation. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. Additionally, I recommend that the Department of Taxation consider the suggestions made by the Department of Planning and Budget to clarify language in the proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: March 24, 1993

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-13-01. Rules of the Board and Standards for Water Wells (Repealing).**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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Title of Regulation: **VR 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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Title of Regulation: **VR 680-13-06. Virginia Petroleum Storage Tank Fund.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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Title of Regulation: **VR 680-13-07. Ground Water Withdrawal Regulations.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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Title of Regulation: **VR 680-14-14. Facility Financial Responsibility Requirements.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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Title of Regulation: **VR 680-21-00. Water Quality Standards. (VR 680-21-07.2, Special Designations in Surface Waters; VR 680-21-07.3, Nutrient Enriched Waters; and VR 680-21-08, River Basin Section Tables.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: March 15, 1993

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.

Notice to the Public

RT Associates has published a Virginia Register Deskbook, a cumulative index of Volumes 1 through 8 (Issue 13). For more information contact RT Associates, P.O. Box 36416, Baltimore, Maryland 21286.

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 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.

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

April 19, 1993 - 9 a.m. – Open Meeting
April 20, 1993 - 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) conduct the review and disposition of enforcement cases; and (iv) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

May 19, 1993 - 2 p.m. – Public Hearing
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled **VR 115-05-01. Regulations Governing Grade "A" Milk.** The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products. The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving station, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

Statutory Authority: § 3.1-530.1 of the Code of Virginia.

Contact: J. A. Beers, Program Manager, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-1453.

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June 25, 1993 – Written comments may be submitted until this date.

June 30, 1993 - 1 p.m. – Public Hearing
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed regulation is to ensure that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act pertaining to motor fuels. The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values[1] of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. Title II of the 1990 amendments to the federal Clean Air Act requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the Virginia

counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The proposed regulation (i) specifies carbon monoxide nonattainment areas; (ii) specifies the control area; (iii) specifies the control period; (iv) specifies a minimum oxygenate content in gasoline during the control period; (v) requires all persons regulated to keep records of classes of oxygenates and oxygenate content; (vi) requires gasoline pump labelling; (vii) specifies methods of sampling, testing, and oxygen content calculations; and (viii) specifies means of compliance and methods of enforcement.

[1] Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476.

Virginia Seed Potato Board

April 21, 1993 - 8 p.m. – Open Meeting

Eastern Shore Agriculture Experiment Station, Research Drive, Painter, Virginia. ♿

The board will meet to review the 1993 planting season. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Department of Agriculture and Consumer Services, Box 26, Onley, VA 23418, telephone (804) 787-5867.

STATE AIR POLLUTION CONTROL BOARD

† **April 23, 1993 - 9 a.m.** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

The agenda will be available two weeks before the meeting date. Please note change in meeting date from April 16 to April 23 as well as change in meeting location.

Contact: Karen Sabasteanski, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

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† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Southwest Virginia Regional Air Quality Office, 121 Russell Road, Abingdon, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Valley of Virginia Regional Air Quality Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Central Virginia Regional Air Quality Office, 7701-03 Timberlake Road, Lynchburg, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Northeastern Virginia Regional Air Quality Office, 300 Central Road, Suite B, Fredericksburg, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, State Capital Regional Air Quality Office, Virginia State Library and Archives, 11th Street at Capitol Square, Lecture Room, Richmond, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Hampton Roads Regional Air Quality Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia.

† **May 26, 1993 - 10 a.m.** – Public Hearing
Department of Environmental Quality, Northern Virginia Regional Air Quality Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia.

June 19, 1993 – Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM).** The

regulation requires that owners obtain a permit prior to the construction of a major industrial/commercial facility or an expansion to an existing one locating in a prevention of significant deterioration area. The regulation prescribes the procedures and criteria for review and final action on the permit application. The proposed amendments are being made in order to make the state prevention of significant deterioration regulation conform to the federal requirements for prevention of significant deterioration new source review program.

STATEMENT

Purpose: The purpose of the regulation is (i) to require the owner of a proposed new or expanded facility to provide such information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality and (ii) to provide the basis for the board's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The proposed amendments are being made to make the regulation conform to the federal requirements for prevention of significant deterioration new source review programs.

Substance: The major provisions of the proposal are summarized below.

1. Definitions are revised to coincide with federal definitions, or to provide more detail.

2. Procedures are revised to coincide with federal procedures.

3. Procedures appropriate to a federally-managed program are revised to reflect a state-managed program.

4. Transition provisions that are no longer applicable are removed.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: The regulations will be an advantage to the community because they will reduce air pollution, a source of significant damage to property and health. Further, because the PSD program is now run by the state rather than the federal government, permits will be processed more quickly and accurately, saving time and money for prospective sources.

2. Department: Advantages to the department stemming from the regulation include better determination of compliance and monitoring, as well as a better knowledge of emissions in an affected area. Because the PSD program is now run by the state rather than the federal government, permits will be processed more quickly and accurately, saving the department staff time and resources.

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

Impact:

1. Entities affected. This regulation applies to any owner who wishes to construct a new commercial or industrial facility or expand an existing one in a prevention of significant deterioration area. Because this regulation affects sources yet to be constructed, it is difficult to determine the exact number of potentially affected facilities. Further, the number of permit applications received by the department varies significantly from one year to the next. However, it is estimated that between 10 to 30 facilities will be required to meet the regulation's requirements within two years of its promulgation.

2. Fiscal impact.

a. Costs to affected entities. Because the changes to the regulation are primarily procedural in nature, no additional costs to sources are anticipated. Additionally, the state-guided approach to PSD will result in more efficient, accurate, and environmentally sound permit processing, and will enable Virginians to have more direct control over the management of its air quality resources.

b. Costs to agency. It is not expected that the regulation amendments will result in any additional cost to the department beyond that currently experienced under the delegated program. It is expected that the department will experience some cost reductions due to the reduced interaction and coordination with EPA associated with the delegated program.

c. Source of agency funds. The sources of department funds to carry out this regulation are the general fund and the grant money provided by EPA under Section 105 of the federal Clean Air Act. It is not expected that the regulation amendments will result in any cost to the department beyond that currently in the budget.

Comparison with federal requirements: None of the proposed amendments will result in making the regulation more stringent than federal requirements.

Location of proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact of the

proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Quality Programs Office (Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of business on June 19, 1993.

Department of Environmental Quality
Southwestern Virginia Regional Air Quality Office
121 Russell Road
Abingdon, Virginia 24210
Ph: (703) 676-5482

Department of Environmental Quality
Valley of Virginia Regional Air Quality Office
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia 24019
Ph: (703) 561-7000

Department of Environmental Quality
Central Virginia Regional Air Quality Office
7701-03 Timberlake Road
Lynchburg, Virginia 24502
Ph: (804) 582-5120

Department of Environmental Quality
Northeastern Virginia Regional Air Quality Office
300 Central Road, Suite B
Fredericksburg, Virginia 22401
Ph: (703) 899-4600

Department of Environmental Quality
State Capital Regional Air Quality Office
Arboretum V, Suite 250
9210 Arboretum Parkway
Richmond, Virginia 23236
Ph: (804) 323-2409

Department of Environmental Quality
Hampton Roads Regional Air Quality Office
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia 23320-2168
Ph: (804) 424-6707

Department of Environmental Quality
Northern Virginia Regional Air Quality Office
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia 22150
Ph: (703) 644-0311

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

Written comments may be submitted until close of business June 19, 1993, to Director of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Karen Sabasteanski, Policy Analyst, Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

ALCOHOLIC BEVERAGE CONTROL BOARD

April 26, 1993 - 9:30 a.m. – Open Meeting
May 10, 1993 - 9:30 a.m. – Open Meeting
May 24, 1993 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia.

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

ASAP POLICY BOARD - VALLEY

† **May 10, 1993 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fishersville, Virginia.

A regular meeting of the local policy board which conducts business pertaining to the following: (i) court referrals, (ii) financial report, (iii) director's report, and (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (Waynesboro number) (703) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

May 13, 1993 - 11 a.m. – Open Meeting
6606 West Broad Street, Richmond, Virginia.

A board meeting and formal conferences.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

AUDITOR OF PUBLIC ACCOUNTS

April 19, 1993 - 10 a.m. – Public Hearing
National Guard Armory, Franklin Street, Christiansburg, Virginia.

April 26, 1993 - 10 a.m. – Public Hearing
Sheraton Inn and Conference Center, Route 3 at I-95, Fredericksburg, Virginia.

May 3, 1993 - 10 a.m. – Public Hearing
Sheraton Inn Coliseum, 1215 Mercury Boulevard, Hampton, Virginia.

Public hearings to receive public testimony on the draft revision of the Uniform Financial Reporting Manual. Individuals planning to attend or make a presentation at one of these hearings are requested to complete a registration form available from the Auditor of Public Accounts. There is no charge to attend the public hearings.

Written comments may be submitted until May 5, 1993. All comments received will be considered in finalizing the revision of the manual.

Contact: UFRM, Auditor of Public Accounts, P.O. Box 1295, Richmond, VA 23210, telephone (804) 225-3350.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

† **April 28, 1993 - 10 a.m.** – Open Meeting
† **May 26, 1993 - 10 a.m.** – Open Meeting
† **June 30, 1993 - 10 a.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† **April 29, 1993 - 10 a.m.** – Open Meeting
† **May 27, 1993 - 2 p.m.** – Open Meeting
† **July 1, 1993 - 10 a.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

† **April 23, 1993 - 1:30 p.m.** – Open Meeting
† **May 19, 1993 - 1:30 p.m.** – Open Meeting
† **June 21, 1993 - 1:30 p.m.** – Open Meeting
City of Hampton Planning Office, Harbor Center Building, 2 Eaton Street, 9th Floor, Conference Room, Hampton, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

April 27, 1993 - 1 p.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

April 28, 1993 - 1 p.m. – Public Hearing
City Hall, 810 Union Street, City Council Chambers, 11th Floor, Norfolk, Virginia.

April 30, 1993 - 1 p.m. – Public Hearing
Municipal Building, 215 Church Avenue, S.W., City Council Chambers, 4th Floor, Roanoke, Virginia.

A public hearing to solicit comment on child care planning issues. Public comments will be received.

Contact: Margaret A. Smith, Interagency Planner, Virginia Council on Child Day Care and Early Childhood Programs, Washington Bldg., 1100 Bank St., Suite 1116, Richmond, VA 23219, telephone (804) 371-8603.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

May 21, 1993 - 8:30 a.m. – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Building, 109 Governor Street, 9th Floor Conference Room, Richmond, Virginia. ♿

June 18, 1993 - 8:30 a.m. – Open Meeting
Ninth Street Office Building, 202 North 9th Street, Governor's Cabinet's Conference Room, Richmond, Virginia. ♿

A regularly scheduled meeting 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, Office of the Coordinator, Interdepartmental Regulation, 730 East Broad St., Richmond, VA 23219-1849, telephone (804) 662-7124 (after May 2, 1993 (804) 692-1960).

BOARD OF COMMERCE

† **May 5, 1993 - 2 p.m.** – Public Hearing
Newport News Omni, 1000 Omni Way Boulevard, Newport News, Virginia. ♿

† **May 12, 1993 - 1 p.m.** –Public Hearing
Holiday Inn Tanglewood, 4468 Starkey Road, Roanoke, Virginia. ♿

† **May 19, 1993 - 7 p.m.** – Public Hearing
Tysons Corner Holiday Inn, 1960 Chain Bridge Road, McLean, Virginia. ♿

† **May 26, 1993 - 1 p.m.** – Public Hearing
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A public hearing connected with the board's study of the feasibility of establishing a licensing program for home inspectors. The study is a result of the Virginia Senate's Joint Resolution 254, which passed during the 1993 session of the Virginia General Assembly.

Contact: Joyce K. Brown, Secretary to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.

† **May 5, 1993 - 10 a.m.** – Public Hearing
Newport News Omni, 1000 Omni Way Boulevard, Newport News, Virginia. ♿

† **May 19, 1993 - 1 p.m.** – Public Hearing
Holiday Inn Tysons Corner, 1960 Chain Bridge Road, McLean, Virginia. ♿

† **May 26, 1993 - 9 a.m.** – Public Hearing
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A public hearing connected with the board's study of the feasibility of establishing a licensing program for property managers of condominiums, townhouses, and other similar common interest communities. The study is a result of the Virginia House of Delegates Joint Resolution 618, which passed during the 1993 session of the Virginia General Assembly.

Contact: Joyce K. Brown, Secretary to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.

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May 7, 1993 – 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 Commerce intends to repeal regulations entitled: **VR 190-02-1. Agency Rules of Practice for Hearing Officers.** The Board of Commerce is proposing to repeal its current rules of practice for hearing officers used for governing all formal proceedings involved in enforcing the regulation of professions and occupations listed under § 54.1-300 of the Code of Virginia to eliminate any confusion, duplication or inconsistency with the statutes incorporated in the Administrative Process Act.

Written comments may be submitted through May 7, 1993, to Bonnie S. Salzman, Director, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230.

Statutory Authority: § 54.1-310 of the Code of Virginia.

Contact: Peggy McCrerey, Regulatory Programs Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2194.

COMPENSATION BOARD

April 28, 1993 - 5 p.m. – Open Meeting
May 26, 1993 - 5 p.m. – Open Meeting
Ninth Street Office Building, 202 North 9th Street, 9th Floor, Room 913/913A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23206-0710, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

BOARD OF CORRECTIONS

Liaison Committee

May 13, 1993 - 9:30 a.m. – Open Meeting
6900 Atmore Drive, Board Room, Richmond, Virginia. ♿

The committee will continue to address and discuss criminal justice issues.

Contact: Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

May 10, 1993 - 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, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF DENTISTRY

May 10, 1993 – 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 Dentistry intends to amend regulations entitled: **VR 255-01-1. Virginia Board of Dentistry Regulations.** The purpose of the proposed amendments is to establish the requirements for certification to apply Schedule VI topical medications.

Statutory Authority: §§ 54.1-2400, 54.1-2700 et seq., 54.1-3303, and 54.1-3408 of the Code of Virginia.

Contact: Marcia J. Miller, Executive Director, Virginia Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (BOARD OF)

† **April 21, 1993 - 8:30 a.m.** – Open Meeting
Hyatt Hotel, 6624 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **May 27, 1993 - 8 a.m.** – Open Meeting
† **June 24, 1993 - 8:30 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, State Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2973 or toll-free 1-800-292-3820.

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April 21, 1993 - 7 p.m. – Public Hearing
Petersburg High School, Petersburg, Virginia.

April 22, 1993 - 7 p.m. – Public Hearing
Maury High School, Norfolk, Virginia.

April 27, 1993 - 7 p.m. – Public Hearing
Warrenton Junior High School, Warrenton, Virginia.

April 28, 1993 - 7 p.m. – Public Hearing
Abingdon High School, Abingdon, Virginia.

May 21, 1993 – 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 Education intends to amend regulations entitled: **VR 270-01-0007. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.** The revised regulations outline the requirements for the provision of special education programs. Areas of coverage include identification, eligibility, service delivery, funding, personnel qualifications, procedural safeguards, local school division responsibilities, and Department of Education responsibilities.

Statutory Authority: §§ 22.1-214 and 22.1-215 of the Code of Virginia.

Contact: Anne P. Michie, Specialist, Federal Program Monitoring, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2013 or toll-free 1-800-292-3820.

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† **April 28, 1993 - 4 p.m.** – Public Hearing
James Monroe Building, 101 North 14th Street, Conference Room D, Richmond, Virginia.

June 18, 1993 – 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 Education intends to adopt regulations entitled: **VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.** The

regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review board to oversee all research involving students that is conducted within the realm of its authority.

STATEMENT

Substance: These regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the area of personal privacy and informed consent. These rights are protected by means of creation in each school entity of a review board to oversee all research involving students that is conducted within the realm of its authority.

Issues: The major issue addressed by these regulations is the balance between the right of society to knowledge that may be gained through research involving human subjects and the rights of the individual to privacy and informed consent in regard to participation in the research.

Basis: These regulations are proposed under the authority of § 22.1-16.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

Purpose: The purpose of these regulations is to create a statewide uniform standard for the protection of students under the purview of the State Board of Education to ensure that the rights of such students are protected when they participate in research activities.

Estimated impact: These regulations will have no fiscal impact. They will simply require that all schools and school divisions that come under the authority of the State Board of Education create a committee which oversees any research done involving students under their purview.

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Contact: Lawrence McCluskey, Lead Specialist, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2762.

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† **May 3, 1993 - 6 p.m.** – Public Hearing
Sheraton Airport Inn, Roanoke, Virginia.

† **May 10, 1993 - 6 p.m.** – Public Hearing
Holiday Inn Fair Oaks, Fairfax, Virginia.

† **May 11, 1993 - 6 p.m.** – Public Hearing
Sheraton Inn Park South, Richmond, Virginia.

June 19, 1993 – 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 Education intends to adopt regulations entitled: **VR 270-01-0057. Special Education Program Standards.** These regulations set standards for special education programs for children with disabilities in Virginia. Criteria are set forth for teaching endorsements, waivers for certain educational interpreters, and program models for school-age and preschool-age students.

STATEMENT

Basis: § 22.1-214 of the Code of Virginia.

Purpose: The purpose of these regulations is to ensure procedures for implementing programs for students with disabilities for public and nonpublic education agencies.

Substance: These regulations set forth standards for teacher assignments, educational interpreter assignments, class size maximums and operation of programs for students with disabilities.

Issues: These standards were the basis of allocating special education add-on funds to local education agencies and were issued under Superintendent's Memorandum since their inception. The standards continued to be issued under Superintendent's Memorandum after the funding mechanism changed in Fiscal Year 1989 (the same class size standards apply under the new funding formula). The Department of Education decided to issue these standards as regulations under the Administrative Process Act.

Impact: Public and nonpublic education agencies have always complied with these standards. The regulations duplicate the language that was in the Superintendent's Memorandum, therefore, there will be no impact as a result of promulgating regulations.

Statutory Authority: § 22.1-214 of the Code of Virginia.

Contact: Dr. Patricia Abrams, Principal Specialist, Special Education, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2874, toll-free 1-800-292-3820 or toll-free 1-800-422-1098/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

May 6, 1993 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 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 COUNTY

April 28, 1993 - 6:30 p.m. – Open Meeting
County Administration Offices, Conference Room, Gloucester, Virginia. ♿ (Interpreter for the deaf provided upon request)

The spring quarterly meeting will address distribution of the updated County Hazardous Materials Plan and include discussion of the annual goals and training exercise.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO COUNTY

† **April 21, 1993 - 7 p.m.** – Open Meeting
Henrico County Public Safety Building, Division of Police, Parham and Hungary Spring Roads, 2nd Floor Briefing Room, Richmond, Virginia. ♿

A meeting to satisfy requirements of the Superfund Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services Coordinator, Division of Fire, P.O. Box 27032, Richmond, VA 23273, telephone (804) 672-4906.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **May 20, 1993 - 10 a.m.** – Open Meeting
Madison Building, 109 Governor Street, Main Conference Room, Richmond, Virginia.

A meeting to discuss the proposed changes to Hazardous Waste Management Regulations for incorporation of US EPA revisions to wood preserver rules.

Contact: William F. Gilley, Regulation Consultant, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

Work Group on Detection/Quantitation Levels

† **April 28, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, Glen Allen, Virginia.

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the State Water Control Board. Other meetings of the work group have been scheduled, at the same time and location, for May 5, May 12, May 19, and May 26, 1993. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5086.

VIRGINIA FIRE SERVICES BOARD

April 30, 1993 - 6 p.m. – Open Meeting
May 1, 1993 - Time unknown – Open Meeting
May 2, 1993 - Time unknown – Open Meeting
Mountain Lake, Virginia.

A work session. No business will be conducted, no policy decisions will be made. This work session was postponed from March 12.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

May 4, 1993 - 9 a.m. – Open Meetings
6606 West Broad Street, Rooms 1, 3 and 4, Richmond, Virginia. ♿

Exams and a board meeting.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA, telephone (804) 662-9111.

Informal Conference Committee

May 5, 1993 - 9 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿

Informal conferences.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA, telephone (804) 662-9111.

BOARD FOR GEOLOGY

April 23, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 3, Richmond, 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 ☎

GOVERNOR'S ADVISORY BOARD ON AGING

† **June 10, 1993 - 1 p.m.** – Open Meeting
† **June 11, 1993 - 1 p.m.** – Open Meeting
The Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting, including work sessions for the board's standing committees. The board will review legislation passed by the 1993 Session of the General Assembly and plan future activities.

Contact: Bill Peterson, Human Resources Coordinator, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2803 or (804) 225-2271/TDD ☎

GOVERNOR'S EMERGENCY MEDICAL SERVICES ADVISORY BOARD

† **April 30, 1993 - 1 p.m.** – Open Meeting
The Embassy Suites Hotel, Richmond, Virginia.

A quarterly meeting. The Executive Committee will meet on April 29 at 7:30 p.m.

Contact: Gary R. Brown, Assistant Director, Office of Emergency Medical Services, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500 or toll-free 1-800-523-6019.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† **April 26, 1993 - 10:30 a.m.** – Open Meeting
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general meeting.

Contact: Abria M. Singleton, Executive Secretary, 4615 W. Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816 or toll-free 1-800-552-7020 or (804) 367-6283/TDD ☎

DEPARTMENT OF HEALTH (STATE BOARD OF)

April 23, 1993 – 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 Health intends to amend regulations entitled: **VR 355-28-100. Regulations for Disease Reporting and Control.** The regulations are being amended to (i) comply with current disease control policies, (ii) change the form for reporting morbidity, and (iii) comply with statutory requirements.

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Contact: C. Diane Woolard, M.P.H., Senior Epidemiologist, Virginia Department of Health, P.O. Box 2448, Room 113, Richmond, VA 23218, telephone (804) 786-6261.

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April 23, 1993 – 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 Health intends to amend regulations entitled: **VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed amendments is to implement the Certificate of Public Need program consistent with the amended law which became effective July 1, 1992.

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

Written comments may be submitted through April 23, 1993, to Paul E. Parker, Director, Division of Resources Development, Virginia Department of Health, 1500 East Main Street, Suite 105, Richmond, Virginia 23219.

Contact: Wendy Brown, Project Review Manager, Division of Resources Development, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

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April 23, 1993 – 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 Health intends to **repeal** regulations entitled: **1987 State Medical Facilities Plan** and **adopt** regulations entitled: **VR 355-30-100 through VR 355-30-113. 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 for review according to the 1992 amendments

to the Certificate of Public Need law.

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

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

April 26, 1993 - 2 p.m. – Teleconference
Richmond Plaza Building, 101 South 7th Street, 4th Floor East Auditorium, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A tele-meeting of the board for the purpose of approving the final version of the waterworks (surface water treatment and total coliform) regulations.

Contact: Susan R. Rowland, MPA, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

April 29, 1993 - 10 a.m. – Open Meeting
Holiday Inn, 1050 Millwood Pike, Winchester, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will conduct a work session. An informal dinner begins at 7 p.m.

April 30, 1993 - 9 a.m. – Open Meeting
Holiday Inn, 1050 Millwood Pike, Winchester, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting of the board.

Contact: Susan R. Rowland, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

† **June 2, 1993 - 10 a.m.** – Open Meeting
Virginia Tech Seafood Experiment Station, 102 South King Street, Hampton, Virginia.

A meeting to discuss industry/state policies regarding vibrio vulnificus.

Contact: Keith Skiles, Shellfish Program Manager, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-7937.

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May 4, 1993 - 1 p.m. – Public Hearing
Main Street Station, 1500 East Main Street, Commissioner's Conference Room, Room 214, Richmond, Virginia.

June 7, 1993 – 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 Health intends to amend regulations entitled: **VR 355-39-100. Regulations Governing Eligibility Standards and Charges for Health Care Services to Individuals.** The proposed amendments (i) change the basis for charges from costs to Medicaid's current payment schedules; (ii) change the eligibility requirements to more closely match those used to determine Medicaid eligibility; (iii) increase local decision making as to what services are provided; (iv) simplify and make more useful the waiver process; and (v) correct references to the Code of Virginia as necessary.

Statutory Authority: §§ 32.1-11 and 32.1-12 of the Code of Virginia.

Contact: Dave Burkett, Director of Reimbursement, Virginia Department of Health, P.O. Box 2448, Room 239, Richmond, VA 23218, telephone (804) 371-4089.

Commissioner's Waterworks Advisory Committee

May 20, 1993 - 10 a.m. – Open Meeting
400 South Main Street, 2nd Street, Culpeper, Virginia.

A meeting to conduct general business of the committee.

Contact: Thomas B. Gray, P.E., Special Project Engineer, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1768.

BOARD OF HEALTH PROFESSIONS

April 20, 1993 - 11 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A regular quarterly meeting of the board.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

Compliance and Discipline Committee

April 19, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

The committee will plan its work for the balance of the calendar year and prepare its report to the full Board of Health Professions to meet on April 20.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

Executive/Legislative Committee

April 20, 1993 - 8:30 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A meeting to review 1993 General Assembly legislation and board agenda.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD

Committee on Professional Education and Public Affairs

April 20, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

The committee will continue its discussions of complaint intake, department public information activity and complainant satisfaction.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD

Regulatory Research Committee

April 19, 1993 - 2 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

The committee will develop its workplan for studies requested by the 1993 General Assembly and prepare its report to the full Board of Health Professions to meet on April 20.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

April 27, 1993 - 9:30 a.m. – Open Meeting
† **June 22, 1993 - 9:30 a.m.** – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

May 25, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting followed by a public hearing on the rules and regulations (VR 370-01-001 and VR 370-01-002). The public hearing will begin at noon.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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May 25, 1993 - Noon – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

May 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed amendments is to amend the agency's regulations to conform to the new methodology adopted by the Virginia Health Services Cost Review Council to measure efficiency and productivity of health care institutions.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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May 25, 1993 - Noon – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

May 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to adopt regulations entitled: **VR 370-01-002. Regulations to Measure the Efficiency and Productivity of Health Care.** The purpose of the proposed regulation is to establish a new methodology to measure the efficiency and productivity of health care institutions.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

May 11, 1993 - 9 a.m. – Open Meeting
101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia.

A general business meeting. For additional information contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632.

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

April 21, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting of the board.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

State Review Board

April 20, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider the following properties for nomination to the Virginia Landmarks Register and the National Register of Historic Places:

1. Dewberry, Hanover County
2. Emmaus Baptist Church, New Kent County
3. Kenmore Woods, Spotsylvania County
4. Lucky Hit, Clarke County
5. Meadea, Clarke County
6. Paspahegh Settlement Site, James City County
7. Red Fox Farm, Mecklenburg County
8. Sunnyfields, Albemarle County
9. Thomas Jefferson High School, Richmond (city
10. Cartersville Historic District, Cumberland County
11. Mount Jackson Historic District, Shenandoah County
12. New Castle Historic District (boundary increase), Craig County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

May 4, 1993 - 9 a.m. – Open Meeting
June 1, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for deaf provided upon request)

A 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 (BOARD OF)

April 19, 1993 - 10 a.m. – Open Meeting
Salem Civic Center, 1001 Boulevard, Parlor A, Salem, Virginia. ♿ (Interpreter for the deaf provided upon request)

April 20, 1993 - 10 a.m. – Open Meeting
City Council Chambers, 22 Lincoln Street, Hampton, Virginia. ♿ (Interpreter for the deaf provided upon request)

April 21, 1993 - 10 a.m. – Open Meeting
One County Complex Court, County Board Chambers, Prince William, Virginia. ♿ (Interpreter for the deaf provided upon request)

April 22, 1993 - 10 a.m. – Open Meeting
501 North 2nd Street, First Floor Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public Participation Regional Regulatory Review workshop, to explain the review and adoption process and to solicit proposals.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

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May 5, 1993 - 3 p.m. – Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, First Floor Conference Room, Richmond, Virginia.

May 5, 1993 – 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 Housing and Community Development intends to amend regulations entitled: **VR 394-01-107. Procedures for Allocation of Low-Income Housing Tax Credits.** The proposed procedures establish the administrative framework for the allocation of low income housing tax credits by the Department of Housing and Community Development.

Statutory Authority: Chapter 8 of the Title 36 of the Code of Virginia, § 42 of the Internal Revenue Code, Governor's

Executive Order Forty (91).

Contact: Graham Driver, Program Administrator, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7122.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† April 20, 1993 - 11 a.m. – Open Meeting
601 South Belvidere Street, Richmond, Virginia.

A 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; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; and (v) consider such other matters and take such other actions as it may deem appropriate. Various committees of the board may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.** The purpose of these amendments is to delete certain processing procedures, clarify provisions as to eligibility of loan applicants, allow existing mobile homes to be financed by VHDA loans insured by FHA, and make minor clarifications and typographical corrections.

STATEMENT

Basis: Section 36-55.30:3 of the Code of Virginia.

Subject, substance and issues: The amendments to the Authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income will:

1. Delete processing procedures from the rules and regulations. The proposed amendment will streamline the rules and regulations to include programmatic guidelines only.

2. Clarify the "citizenship" provision to require that an applicant must be a U.S. citizen or a lawful permanent resident alien.

3. Clarify that the provision that a locked-in interest rate cannot be lowered at the time of a second reservation (a) only applies if the second reservation is made within 12 months of the original reservation lock-in agreement, and (b) applies to all loans, including VA loans and further clarifying that the interest rate may be increased at the time of the second reservation.

4. Clarify that in calculating the maximum percentage of monthly income to be applied to payment of PITI on the authority's mortgage loan, the authority will include all debt payments with more than six months' duration and monthly payments lasting less than six months if making such payments will adversely affect the applicant's ability to make initial mortgage loan payments. This change will bring VHDA requirements in line with FHA, VA and FmHA regulations. Currently, only monthly installment loans with a duration exceeding six months are included.

5. Provide that an applicant's net worth does not include the value of life insurance policies and retirements plans.

6. Clarify that an applicant's credit history and outstanding collections will be considered in underwriting an authority loan.

7. Allow existing mobile homes to be financed by VHDA loans insured by FHA. Presently only new mobile homes may be financed.

8. Make minor clarifications and typographical corrections.

Impact: The authority does not expect that the amendments will have a significant impact on the number of persons served and does not expect that any significant costs will be incurred for the implementation of and compliance with the amendments.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Contact: J. Judson McKellar, Jr., General Counsel, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† April 29, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

A public hearing to hear comments on the proposed amendment to VR 425-01-26, Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia. This amendment provides new numeric ratios for program sponsors performing Davis-Bacon work.

† **April 29, 1993 - Immediately following public hearing** – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

A special meeting of the council. The agenda is as follows:

1. Deregistration of the Dorey Electric Company Apprentice Program.
2. Proposed changes to the ratio regulations for contractors performing Davis-Bacon work, VR 425-01-26.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2381.

LIBRARY BOARD

† **May 3, 1993 - 10 a.m.** – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia.

A meeting to discuss administrative matters.

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.

STATE COUNCIL ON LOCAL DEBT

April 21, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia.

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

STATE LOTTERY BOARD

April 26, 1993 - 10 a.m. – Open Meeting
2201 West Broad Street, Richmond, Virginia.

A regular monthly meeting. 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.

VIRGINIA MANUFACTURED HOUSING BOARD

† **May 19, 1993 - 10 a.m.** – Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, 2nd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting to review public input and suggestions for draft of Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160 or (804) 371-7089/TDD

MARINE RESOURCES COMMISSION

† **April 27, 1993 - 9:30 a.m.** – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals; fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings are open to the public. Testimony 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: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804)

247-2292/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

April 21, 1993 - 1 p.m. – Open Meeting
United Way of Virginia, 224 East Broad Street, Room 101, Richmond, Virginia. ♿ (Interpreter the deaf provided upon request)

A meeting to focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health.

Contact: Nancy C. Ford, MCH Nurse Consultant, Department of Health, Division of Maternal and Child Health, 1500 E. Main St., Suite 137, Richmond, VA 23218-2448, telephone (804) 786-7367.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

April 23, 1993 – 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 amend regulations entitled: **State Plan for Medical Assistance Relating to EPSDT and Inpatient Psychiatric Services: VR 460-01-22, Services; VR 460-03-3.1100, Amount, Duration and Scope of Services; VR 460-02-3.1300, Standards Established and Methods Used to Assure High Quality of Care; and VR 460-02-4.1920, Methods and Standards for Establishing Payment Rates-Other Types of Care.** The purpose of this proposal is to promulgate permanent regulations to supersede the current emergency regulations which provide for the same policies. The sections of the State Plan for Medical Assistance (the Plan) affected by this proposed regulation are: preprinted page 22; the Amount, Duration, and Scope of Services narrative (Supplement 1 to Attachment 3.1 A and B); Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C); and Methods and Standards for Establishing Payment Rates - Other Types of Care (Attachment 4.19 B).

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) requires that state Medicaid programs provide to recipients any and all necessary services permitted to be covered under federal law, when the need for those services are identified as a result of screenings through the Early and Periodic Screening, Diagnosis, and Treatment Program. Such services must be provided even if they are not otherwise covered under the Plan, and are thus not available to recipients independent of EPSDT referral.

The EPSDT program provides for screening and diagnostic services to determine physical and mental defects in recipients up to age 21, and health care, treatment, and other services to correct or ameliorate any defects or chronic conditions discovered. EPSDT is a mandatory program which must be provided for all Medicaid-eligible recipients who are 18 years old or younger and, at the state's option, up to age 21. The Commonwealth provides EPSDT for recipients to age 21.

One service now required to be covered for recipients because of EPSDT is inpatient psychiatric services in psychiatric hospitals. These regulations reflect the definition of covered services and the fee-for-service reimbursement methodology.

During the development of the department's policy concerning EPSDT, the Health Care Financing Administration (HCFA) provided guidance to the states. DMAS incorporated this guidance into its emergency regulations which HCFA subsequently approved. DMAS has tightened its definition of covered psychiatric services to be those provided in psychiatric hospitals when the services are the result of EPSDT.

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

Written comments may be submitted until 5 p.m. on April 23, 1993, to Betty Cochran, Director, Division of Quality Care Assurance, 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.

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April 23, 1993 – 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 amend regulations entitled: **VR 460-02-4.1810, VR 460-02-4.1830, and VR 460-02-4.1920. Outpatient Rehab Services and Removing the Medicare Cap on Fees.** The purpose of this proposal is (i) to promulgate permanent regulations which will provide for equitable application of recipient cost sharing policies for outpatient rehabilitative services and the elimination of the Medicare cap on all services' fees; and (ii) to replace emergency regulations currently in effect.

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

Written comments may be submitted until 5 p.m. on April

23, 1993, to Jerome W. Patchen, Director, 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.

† **May 11, 1993 - 1 p.m.** – Open Meeting
600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting of the board to discuss medical assistance services and issues pertinent to the board.

Contact: Patricia A. Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll-free 1-800-343-0634/TDD

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May 21, 1993 – 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 amend regulations entitled: **State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements. VR 460-03-4.1940:1. Nursing Home Payment System (PIRS).** The purpose of this proposal is to promulgate permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, this proposed regulation will require nursing facilities to file audited financial statements and related information as part of their annual cost report, and will change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Interim settlement/prospective rate time frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report is received. Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited financial statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

Appeal notice requirements: Since 1986, DMAS has used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for nursing facilities (except for final decisions signed by the DMAS director). To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

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

Written comments may be submitted through May 21, 1993, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, 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.

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June 4, 1993 – 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 amend regulations entitled: **VR 460-04-8.7. Client Appeals Regulations.** The purpose of this proposal is to amend regulations governing the management and conduct of client appeals for the Medicaid program.

The Code of Federal Regulations § 431 Subpart E contains the federal requirements for fair hearings for

applicants and recipients. This subpart, in implementing the Social Security Act § 1902 (a)(3), requires that the State Plan for Medical Assistance provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. Hearings are also available for individuals if Medicaid takes action to suspend, terminate, or reduce services. The State Plan conforms to this requirement on preprinted page 33.

The Virginia General Assembly amended the Administrative Process Act effective July 1, 1989, to allow judicial review of public assistance case decisions. While granting recipients the right to judicial review, the General Assembly limited the scope of that review to the application of the law to an individual case; the validity of the law itself is not subject to review. At that time, the DMAS revised its administrative procedures for recipient appeals, replacing its then current Medicaid Appeals Board with a panel of administrative law judges. The client appeals system now provides for two levels of review of Medicaid recipients' and applicants' appeals. The first level is a hearing officer's decision and the second is a decision by a panel of administrative law judges.

On July 8, 1992, a class action lawsuit was filed in Federal District Court (Shifflett, et al. v. Kozlowski, C.A. No. 92-0071H, Western District of Virginia, Harrisonburg Division) challenging the timeliness of administrative decisions. Federal law requires that a final agency decision be issued within 90 days. Panel review is not a process required by federal law. The 90-day federal limit cannot be met if panel review is included. This timeliness issue is being pressed in this litigation. These proposed regulatory amendments are designed to resolve the issue by requiring an appellant to acknowledge the nonapplicability of the 90-day requirement to panel review as a condition of appeal. They also give an appellant the right to seek judicial review directly from the decision of the hearing officer. Panel review thus becomes optional with the appellant.

An issue has also been raised regarding DMAS receiving federal matching dollars (FFP) for benefits paid during appeals after the 90-day period. Accordingly, the regulations have been amended to permit benefits only through the hearing officer level of the appeal.

These proposed regulations are intended to address the issues raised in the earlier referenced lawsuit as well as other issues deemed by DMAS as requiring revision.

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

Written comments may be submitted through June 4, 1993, to Thomas J. Czelusta, Sr., Administrative Law Judge, Department of Medical Assistance Services, Division of Client Appeals, 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.

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† **May 25, 1993 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

† **May 26, 1993 - 9 a.m.** – Public Hearing
Norfolk City Council Chambers, City Hall Building, 810 Union Street, 11th Floor, Norfolk, Virginia.

† **June 18, 1993** – 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 amend regulations entitled: **VR 460-03-3.1100, 460-02-3.1300, VR 460-03-3.1301, VR 460-04-3.1300, VR 460-04-8.10. Criteria for Nursing Home Preadmission Screening and Continued Stay; Technical Amendments.** The purpose of this proposal is to provide permanent regulations which supersede existing emergency regulations, and clarify the requirements and the process for ensuring that appropriate criteria for placing recipients in nursing facilities are met.

DMAS promulgated an emergency regulation for these criteria effective September 1, 1992. This regulatory package represents the agency's suggested proposed regulations to begin the permanent rule making process. These criteria are used by local screening teams to approve or deny Title XIX (Medicaid) payment for nursing facility or community-based care services.

Nursing home preadmission screening was implemented in Virginia in 1977 to ensure that Medicaid-eligible individuals placed in nursing homes actually required nursing home care. In 1982, DMAS obtained approval for a Section 2176 Home and Community-Based Care waiver to allow individuals who have been determined to require nursing facility services an alternative to nursing home placement. This alternative to nursing home care has become the Home and Community-Based Care Services program and offers such services as personal care, respite care, and adult day health care.

In 1989, DMAS revised a portion of the regulations related to nursing home preadmission screening to incorporate the requirement to screen all individuals for conditions of mental illness or mental retardation.

Section 32.1-330 of the Code of Virginia designates that the definition for eligibility to community based services will be included in the State Plan for Medical Assistance. In the existing emergency regulations, nursing needs are defined only by example of the types of nursing services which indicate a need for nursing facility care. This proposed regulation adds a definition for medical and nursing needs and clarifies and expands the list of the types of services which are provided by licensed nursing or professional personnel. It also defines imminent risk of nursing facility placement.

This proposed regulation, as does the existing emergency regulation, contains additional sections which summarize the requirements which must be met to find an individual eligible for nursing facility care and/or community based care. The list of specific care needs which do not qualify an individual for nursing facility care has been clarified, expanded, and moved to the summary section. The evaluation section clarifies specific criteria for determining when an individual is at imminent risk of nursing home placement and can be authorized for community-based care placement. It also requires the evaluator to document that a community-based care option has been explored and explained to the client and/or client's primary caregiver prior to authorizing nursing facility care.

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1, Attachment 3.1 C: The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the plan into compliance with the 1992 Appropriation Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types. The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in VR 460-04-8.10, Long-Stay Acute Care Hospital Regulations, which are state-only regulations.

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 board 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. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

In 1982, § 32.1-327.2 of the Code of Virginia was revised to require preadmission screening for all individuals who will be eligible for community or institutional long-term care (revised in 1985 in § 32.1-330 of the Code of Virginia). The Code of Federal Regulations, Title 42, Part 483, requires states to ensure that nursing facility residents meet criteria for nursing facility care.

Summary and analysis: The sections of the State Plan for Medical Assistance modified by this action are "Narrative for the Amount, Duration, and Scope of Services" (Attachment 3.1 A & B, Supplement 1); "Standards Established and Methods Used to Assure High Quality Care" (Attachment 3.1-C); and "Nursing Facility Care Criteria" (Supplement 1 to Attachment 3.1-C). The non-State Plan regulations affected are Outpatient Physical Rehabilitative Services (VR 460-04-3.1300) and Long-stay Acute Care Hospitals (VR 460-04-8.10).

Nursing Home Preadmission Screening and Nursing Facility Criteria ("Standards Established and Methods Used to Assure High Quality Care" (Attachment 3.1-C)); and "Nursing Facility Care Criteria" (Supplement 1 to Attachment 3.1-C)

Long-term care is the fastest growing expense in Medicaid's budget. Nursing home preadmission screening is the mechanism designed to prevent inappropriate utilization of Medicaid-funded long-term care services. The goal of Nursing Home Preadmission Screening is to assess an individual's need for long term care services. About 1982, DMAS originally developed criteria for nursing facility care based upon the Long-Term Care Information Assessment Process (DMAS-95). These criteria enabled physician, nursing home preadmission screening committees, medical review teams, and hospital and nursing facility discharge personnel to apply standards for facility admission consistently. Any individual whose care needs did not meet these criteria did not qualify for Medicaid-funded nursing facility services.

In the existing emergency regulations, nursing needs are defined only by example of the types of nursing services which indicate a need for nursing facility care. This proposed regulation adds a definition for medical and nursing needs and clarifies and expands the list of the types of services which are provided by licensed nursing or professional personnel. It also defines imminent risk of nursing facility placement.

The Omnibus Budget Reconciliation Act (OBRA) of 1987 required that states specify a resident assessment instrument by which all nursing facility residents were to be assessed. The Commonwealth proposed that the DMAS-95 be that instrument for Virginia but the Health Care Financing Administration (HCFA) did not approve its use. Therefore, effective March 27, 1991, Virginia implemented HCFA's Resident Assessment Instrument (RAI) as the official state instrument. The Minimum Data Set (MDS) is a component of the RAI. The MDS achieves the federally mandated purpose of resident assessment for the purpose of care planning. In addition, to reduce paperwork demands of nursing facility providers, DMAS has also adopted its use for continued stay evaluations to replace the DMAS-95.

The criteria based on the MDS mirror the criteria in the DMAS-95. Even though it was not possible to match all items between the two forms exactly, efforts were made to accommodate variations in criteria items to the extent possible. The data analysis indicates that there is no significant difference between the two assessment instruments.

Nursing Home Preadmission Screening Committees will still use the DMAS-95, the purpose of which is to determine appropriate medical care needs and proper placement in the continuum of care between community services and institutionalization.

Rehabilitation services: In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1: The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

Attachment 3.1 C: The modification to outpatient rehabilitative services is also reflected in this attachment. DMAS will periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. This is changed from the requirement that assessments be conducted annually. The change to recognize the provision of psychological services by supervised licensed clinical social workers is also reflected in this Plan section.

VR 460-04-3.1300: The reference to the Rehabilitation Treatment Authorization form (DMAS-125) is deleted for outpatient rehabilitative services.

Supervision of Licensed Clinical Social Workers:

VR 460-04-8.10 (Long-stay Acute Care Hospital Regulations): The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in these state-only regulations.

Impact: The state implemented the clarifications included in these regulations under emergency regulations effective September 1, 1992. The intended impact of these regulations is to allow continued consistency in application of the nursing facility criteria and the department's ability to be sustained in actions appealed based upon clear and consistent regulations. The only cost impact related to these regulations was the cost of statewide training for nursing home preadmission screening teams and providers and these costs were covered through training registration fees. DMAS routinely issues policy manual updates, so there is no cost impact ascribed to these regulations related to policy revisions. Nursing Home Pre-Admission screening teams are the entities primarily affected by this regulatory clarification. DMAS is working closely with these entities to ensure clear understanding and consistent application of the nursing facility criteria. DMAS is monitoring closely all individual Medicaid recipients who may be affected by these regulations and will report the results of this monitoring to the Secretary of Human Resources to determine whether the regulations have any adverse impact on Medicaid recipients prior to the finalization of these proposed regulations.

The technical amendments included in the package are effecting no new reimbursement methodology changes. Therefore, there is no fiscal impact attached to these changes.

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

Written comments may be submitted through June 18, 1993, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

April 28, 1993 - 10 a.m. – Open Meeting
Southwestern Virginia Training Center, Hillsville, Virginia. &

A regular monthly meeting. Agenda to be published on April 21. The agenda may be obtained by calling Jane Helfrich.

Tuesday	Informal session	8 p.m.
Wednesday	Committee meetings	9 a.m.
	Regular session	10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

State Human Rights Committee

† **April 23, 1993 - 9 a.m.** – Open Meeting
John Randolph Hospital, 411 West Randolph Road, Women's Center Conference Room, Hopewell, Virginia. &

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, (804) 786-3988.

Virginia Interagency Coordinating Council

April 21, 1993 - 9:30 a.m. – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Conference Rooms 1 and 2, Richmond, Virginia. & (Interpreter for the deaf provided upon request)

A meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services - the Part H early intervention program in their efforts to proceed with the implementation of Part H of the Individuals with Disabilities Education Act (IDEA), that provides early intervention services for infants and toddlers with disabilities and their families, ages birth through 2.

Contact: Dr. Michael Fehl, Ed.D., Director, Child/Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

May 6, 1993 - 7 p.m. – Open Meeting
502 South Main Street #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the board will hold a business meeting to discuss DOC contract, budget, and other related business. Then the board will meet to review cases 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. #4, Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

May 20, 1993 - 1 p.m. – Open Meeting
Virginia Military Institute, Smith Hall, Lexington, Virginia. &

Finals meeting of the Board of Visitors. Also, a regular meeting to (i) discuss committee reports; (ii) approve awards, distinctions and diplomas; (iii) discuss personnel changes; and (iv) elect president pro tem.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

STATE MILK COMMISSION

April 21, 1993 - 10:30 a.m. – Open Meeting
200-202 North 9th Street, Suite 1015, Richmond, Virginia. &

A regularly scheduled meeting to (i) consider such matters as routine statistical information; (ii) approve several distributors for Virginia license(s); and (iii) discuss any further matters that may need the commission's attention.

Contact: Rodney L. Phillips, Administrator, State Milk Commission, 200-202 N. 9th St., Suite 1015, Richmond, VA 23219-3402, telephone (804) 786-2013 or (804)

786-2013/TDD ☎

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

† **May 18, 1993 - 2 p.m.** – Open Meeting
Virginia Museum Galleries, 2800 Grove Avenue, Richmond, Virginia. ♿

A meeting to consider gifts and purchase of works of art, and to review loan recommendations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

† **May 20, 1993 - 11 a.m.** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ♿

A meeting to conduct a year-end review of financial statements and to discuss enterprise operations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

† **May 20, 1993 - Noon** – Open Meeting
Virginia Museum of Fine Arts, Virginia Museum Auditorium, Boulevard and Grove Avenue, Richmond, Virginia. ♿

A meeting to receive reports from committees, officers and staff, and to conduct budget review and yearly overview of operations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

April 24, 1993 - 9 a.m. – Open Meeting
VPI & SU, Burrus Hall, 400 D Board Room, Blacksburg, Virginia.

A meeting to 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 January 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 Advisory Committee

April 20, 1993 - 7 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct an informational hearing for the purpose of receiving comments on questions and concerns related to the delegation of nursing to unlicensed, assistive personnel and the role and responsibility of the nurse who delegates nursing acts to others.

April 21, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review questions and concerns related to the delegation of nursing activities to unlicensed, assistive personnel.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

Special Conference Committee

April 19, 1993 - 8:30 a.m. – Open Meeting
April 21, 1993 - 8:30 a.m. – Open Meeting
April 23, 1993 - 8:30 a.m. – Open Meeting
April 26, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct 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: M. Teresa Mullin, R.N., Assistant Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

April 28, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, Richmond, Virginia. ♿

A board meeting and formal conferences.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

PREVENTION AND CHILDREN'S RESOURCES ADVISORY COUNCIL

April 22, 1993 - 10 a.m. – Open Meeting
James River Corporate Office, 100 Tredegar Street, Richmond, Virginia.

A regularly scheduled quarterly business meeting.

Contact: Harriet Russell, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530.

PRIVATE SECURITY SERVICES ADVISORY BOARD

† **April 21, 1993 - 9:30 a.m.** – Open Meeting
Roanoke Municipal Building, 215 Church Avenue, City Council Chambers, Roanoke, Virginia. &

A meeting to discuss business of the advisory board.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

BOARD OF PROFESSIONAL COUNSELORS

May 7, 1993 – 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 Professional Counselors intends to amend regulations entitled: **VR 660-01-02. Regulations Governing the Practice of Professional Counseling.** The proposed regulations establish standards of practice for professional counseling, including education, supervised experience and examination for licensure, and amends fees. The proposed regulations result from a biennial review.

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

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

April 19, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #2, Richmond, Virginia. &

A formal hearing. Public comment will not be heard.

Contact: Evelyn Brown, Executive Director, or Bernice Parker, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328.

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July 20, 1993 - 9 a.m. – Public Hearing
6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

August 7, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **VR 565-01-2. Regulations Governing the Practice of Psychology.** The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

REAL ESTATE APPRAISER BOARD

NOTE: CHANGE IN MEETING DATE.
† **May 18, 1993 - 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.

Complaints Committee

April 21, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

† **April 22, 1993 - 10 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia.

A regular monthly business meeting of the board.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, toll-free 1-800-552-5019/TDD ☎ or (804) 367-0315/TDD ☎

† **April 19, 1993 - 3 p.m.** – Public Hearing
Woodrow Wilson Rehabilitation Center, Cashett Chapel Building, Fishersville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **April 20, 1993 - 2:30 p.m. and 5:30 p.m.** – Public Hearing
Huntington Office, 5904 Old Richmond Highway, Suite 400, Alexandria, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **April 22, 1993 - 3 p.m.** – Public Hearing
468 East Main Street, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **April 27, 1993 - 2:30 p.m. and 5:30 p.m.** – Public Hearing
5365 Robin Hood Road, Suite G, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to provide an opportunity for the department to receive comments, suggestions and recommendations for the Vocational Rehabilitation and Independent Living state plans from the public, including consumers and representatives of organizations. Public hearings are hosted in cooperation with the State Independent Living Council.

Contact: Betty Sparrow, Policy Analyst, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0169 or toll-free 1-800-552-5019/TDD ☎

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

May 20, 1993 - 10 a.m. – Open Meeting
1500 East Main Street, Suite 115, Main Street Station, Richmond, Virginia. ♿

A regular meeting.

Contact: Constance G. Talbert, Secretary, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

April 21, 1993 - 10 a.m. – Open Meeting
Municipal Center, 2449 Princess Anne Road, Agricultural Conference Room, Virginia Beach, Virginia. ♿

A meeting to hear all administrative appeals of denials of onsite disposal system permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

May 7, 1993 – 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 Social Services intends to adopt regulations entitled: **VR 615-01-47. Disability Advocacy Program.** The purpose of the proposed regulation is to allow local departments of social services to make referrals and pay for legal services for recipients of general relief or state and local foster care when the provision of these services results in approval of previously denied claims for Supplemental Security Income disability benefits.

Statutory Authority: §§ 63.1-25 and 63.1-89.1 of the Code of Virginia.

Written comments may be submitted through May 7, 1993, to Diana Salvatore, Program Manager, Medical Assistance Unit, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

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May 21, 1993 – 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 Social Services intends to adopt regulations entitled: **VR 615-80-01. Human Subject Research Regulations.** The regulations are for assuring the protection of participants in human subject research conducted or authorized by the Virginia Department of Social

Services, local social service agencies, agencies licensed by the department, and others receiving funds for state or local agencies.

Statutory Authority: §§ 63.1-25 and 63.1-25.01 of the Code of Virginia.

Written comments may be submitted through May 21, 1993, to Sue Murdock, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Policy Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

April 19, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 3, Richmond, 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

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

April 29, 1993 - 10 a.m. – Open Meeting
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia.

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, Virginia 23219, telephone (804) 775-4648 or toll-free 1-800-792-LOAN.

DEPARTMENT OF TAXATION

April 23, 1993 – 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 630-3-414. Corporation Income Tax: Sales Factor.** This regulation sets forth the proper method for including receipts from installment sales in the sales factor. The basis portion is included in the sales factor in the year of sale. The net gain portion and interest income are included in the sales factor in the year recognized for federal income tax purposes. The regulation also clarifies when such receipts should be included in the numerator of the sales factor.

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

Contact: Michael S. Melson, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0033.

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April 23, 1993 – 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 630-3-419. Corporation Income Tax: Construction Corporation; Apportionment.** This regulation clarifies that the "completed contract method" mentioned in § 58.1-419 of the Code of Virginia does not include any of the "percentage of completion" methods available under federal law. In addition, the regulation clarifies which apportionment formula should be used when a construction corporation reports income under two or more accounting methods. Other nonsubstantive changes are made to conform to the style of The Virginia Register.

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

Contact: Michael S. Melson, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0033.

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April 23, 1993 – 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 630-10-73. Retail Sales and Use Tax: Newspapers, Magazines, Periodicals and Other Publications.** The purpose of the proposed amendment is to clarify what constitutes taxable/exempt publications for purposes of the retail sales and use tax.

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

Contact: Terry M. Barrett, Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0010.

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April 23, 1993 – 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 630-10-74. Retail Sales and Use Tax: Nonprofit**

Organizations. The purpose of the proposed amendment is to clarify the sales and use tax treatment of sales and purchase transactions made by nonprofit organizations.

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

Contact: Lonnie T. Lewis, Jr., Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0962.

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April 23, 1993 – 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 630-10-80. Retail Sales and Use Tax: Penalties and Interest.** The purpose of the proposed amendment is to reflect recent law changes in the area of civil and criminal penalties in light of Virginia's 1990 Tax Amnesty Program and clarify the application of penalty to audit assessments.

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

Contact: Valerie H. Marks, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0964.

VIRGINIA COUNCIL ON TEEN PREGNANCY PREVENTION

May 6, 1993 - 10 a.m. – Open Meeting
Koger Center, 1604 Santa Rosa Drive, Wythe Building, Conference Rooms A and B, Richmond, Virginia.

A regularly scheduled quarterly business meeting.

Contact: Jeanne McCann, Coordinator, Virginia Council on Teen Pregnancy Prevention, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, P.O. Box 1797, Richmond, VA 23219, telephone (804) 786-1530.

DEPARTMENT OF TRANSPORTATION

June 10, 1993 - 9 a.m. – Public Hearing
Salem District Office, Harrison Avenue, Salem, Virginia. ♿
(Interpreter for the deaf provided upon request)

Final allocation hearing for the western districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Bristol, Salem, Lynchburg, and Staunton districts.

June 10, 1993 - 2 p.m. – Public Hearing
Virginia Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Final allocation hearing for the eastern districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia districts.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-9950.

TREASURY BOARD

April 21, 1993 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting of the board.

Contact: Linda F. Bunce, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142.

VIRGINIA RACING COMMISSION

† **May 11, 1993 - 9:30 a.m.** – Open Meeting
Richmond Plaza, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia. ♿

A regular commission meeting including a discussion of the proposed regulation relating to satellite facilities.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

May 11, 1993 - 9:30 a.m. – Open Meeting
June 8, 1993 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to (i) approve minutes of the prior month's meeting; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, Mutual Building, 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

VIRGINIA VOLUNTARY FORMULARY BOARD

April 22, 1993 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider 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 B1-9, Richmond, VA 23219, telephone (804) 786-4326.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR THE)

April 19, 1993 - 2 p.m. – Public Hearing
April 19, 1993 - 6:30 p.m. – Public Hearing
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ♿

April 21, 1993 - 2 p.m. – Public Hearing
Commonwealth of Virginia Building, 210 Church Avenue, S.W., Roanoke, Virginia. ♿

April 21, 1993 - 6 p.m. – Public Hearing
Lion's Sight Foundation, 501 Elm Avenue, S.W., Roanoke, Virginia. ♿

A public hearing to invite comments from the public regarding vocational rehabilitation and independent living programs for persons with visual disabilities. Comments will be considered in developing the state plans for these two programs.

Contact: Jane B. Ward, IL Program Specialist, or James G. Taylor, VR Program Specialist, 397 Azalea Ave., Richmond, VA, telephone (804) 371-1111 or 371-3112.

April 24, 1993 - 10:30 a.m. – Open Meeting
397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board to receive reports from the department staff and other information that may be presented to the board. A portion of this meeting will be held in conjunction with the department's Advisory Committee on Services.

Contact: Joseph A. Bowman, Assistant Commissioner, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD ☎ or toll-free 1-800-622-2155/TDD ☎ .

Advisory Committee on Services

April 24, 1993 - 10 a.m. – Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ♿

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth. A portion of this meeting will be conducted jointly with the Board for the Visually Handicapped.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

May 5, 1993 - 1 p.m. – Open Meeting
Ramada Inn, Lexington, Virginia.

Committee meetings.

May 5, 1993 - 7 p.m. – Open Meeting
Rockbridge High School, Rockbridge County, Virginia.

A public meeting.

May 6, 1993 - 8:30 – Open Meeting
Ramada Inn, Lexington, Virginia.

A council business session.

Contact: Jerry M. Hicks, Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA WASTE MANAGEMENT BOARD

† **May 4, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality (formerly the Water Control Board Offices), Innsbrook, 4900 Cox Road, Richmond, Virginia. ♿

A general business meeting. Staff will seek approval to advertise the proposed Infectious Waste Regulations for public comment.

Contact: Loraine Williams, Executive Secretary, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD TELE

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† **May 20, 1993 - 2 p.m.** – Public Hearing
Madison Building, 109 Governor Street, Main Conference Room, Richmond, Virginia.

June 18, 1993 – 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 Waste Management Board intends to amend regulations entitled: **VR 462-10-1. Hazardous Waste Management Regulations.** Amendment 13 to the Hazardous Waste Management Regulations incorporates changes applicable to wood preservers.

STATEMENT

Basis: Section 10.1-1402(11) of the Virginia Waste Management Act contained in Chapter 14 of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

Purpose: The Virginia Waste Management Board is proposing amendments to the existing Virginia Hazardous Waste Management Regulations (VR 672-10-1) to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. By maintaining the equivalence of its regulations with those issued by the United States Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), the Commonwealth remains eligible to carry out its own hazardous waste management program instead of the federal program.

Substance and issues: All substantive modifications and additions contained in Amendment 13 to the Virginia Hazardous Waste Management Regulations are made in response to changes made by EPA in the federal regulations implementing RCRA and HSWA. The amendment conforms to less stringent federal changes. Amendment 13 includes the changes that were adopted by EPA on December 24, 1992, as the regulations affect the wood preserving industry.

The modifications to the wood preserving requirements made by EPA establish a more practical, less prescriptive drip pad management and design standards for wood preservers. The modifications include:

1. Narrowing the scope of the wastewater listings to those wastewaters that come in contact with process contaminants,

2. Eliminating the F032 designation for past users of chlorophenolic formulations if F034 or F035 wastes are currently being generated,

3. Revising the drip pad cleaning requirements to require cleaning as needed to facilitate weekly inspections,

4. Adding requirements that drip pad surface materials be chemically resistant and be maintained to prevent deterioration,

5. Replacing the requirement that new drip pad coatings, sealers, and covers be "impermeable" with a choice between the use of a coating/sealer on the surface or the installation of a liner and leak detection system equipped with leak collection,

6. Eliminating the requirement for retrofitting existing drip pads and replacing the requirement that existing and new drip pads be "impermeable" with a requirement that they meet a numerical permeability standard, and

7. Requiring the cleanup of storage yard "drippage" and contingency plans for such cleanup.

Impact: 20 wood preserving operations will be impacted.

The proposed amendment reduces the regulatory burden on existing industries by eliminating the requirement for retrofitting of existing drip pads and providing for more flexibility in complying with performance standards. The amendment is the direct result of federal changes in regulations affecting wood preservers across the country. It is estimated that the amendment will save existing operations approximately $600,000 in upgrading requirements for drip pads alone.

The amounts of federal grants made available to the department providing funding for the base program for implementation and management. The amendment will have no impact on the operation of the base program.

Contact: William F. Gilley, Regulation Consultant, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

June 4, 1993 – 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 Board for Waste Management Facility Operators intends to adopt regulations entitled: **VR 674-01-01. Public Participation Guidelines.** The purpose of the proposed regulation is to establish procedures to solicit comment from all interested parties, establish a mailing list and establish procedures for public hearings, notice of intended regulatory action and advisory committees.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code

of Virginia.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

† **April 27, 1993 - 6:30 p.m.** – Public Hearing
Culpeper Middle School, 500 Achievement Drive, Culpeper, Virginia. ♿ (Interpreter for the deaf provided upon request)

The State Water Control Board will hold a public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0087149 for Mt. Dumplin Sewage Treatment Plant, Jefferson Homebuilders, Inc., P.O. Box 1128, Culpeper, VA 22701. The purpose of this hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the proposed discharge on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, Hearings Reporter, State Water Control Board, Office of Policy Analysis, 4900 Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5162.

† **May 11, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Training Room, Glen Allen, Virginia.

The board's staff will meet with the Science Advisory Committee to discuss water quality standards issues for the 1993 Triennial Review.

Contact: Jean Gregory, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

† **May 19, 1993 - 7 p.m.** – Open Meeting
Fairfax County Government Center, 1200 Government Center Parkway, Conference Center, Rooms 4 and 5, Fairfax, Virginia.

A meeting to receive comments from interested persons on the intent to amend the Potomac Embayment Standards of VR 680-21-00, Water Quality Standards, and on the costs and benefits of the intended action (see Notices of Intended Regulatory Action).

Contact: Alan E. Pollock, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

† **May 20, 1993 - 7 p.m.** – Open Meeting
Rockingham County Administration Office, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the North River Surface Water Management Area and the cost and benefits of the stated action (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† **May 24, 1993 - 7 p.m.** – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Board Room, Glen Allen, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the James River Surface Water Management Area, the Richmond Metropolitan Area, and the cost and benefits of the stated action (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† **May 26, 1993 - 7 p.m.** – Open Meeting
102 North Church Street, Clarke County Board of Supervisors Room, Berryville, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the Shenandoah River Surface Water Management and the cost and benefits of the adoption (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **April 29, 1993 - 3 p.m.** – Open Meeting
† **April 30, 1993 - 8 a.m.** – Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A regularly scheduled meeting of the Board of Visitors to approve the budgets and fees of the College and Richard Bland College, to receive reports from several committees of the board, and to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals or organizations who request it.

Contact: William N. Walker, Director, Office of University Relations, College of William and Mary, James Blair Hall, Room 101C, P. O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-1005.

LEGISLATIVE

CHESAPEAKE BAY COMMISSION

† **May 6, 1993 - 1 p.m.** – Open Meeting
† **May 7, 1993 - 9:30 a.m.** – Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia.

A quarterly meeting. Topics on May 6 include an examination of the current state of shellfish populations and management initiatives and the future of the oyster industry. Topics on May 7 include an examination of environmental conditions which serve as indicators regarding the state of the Chesapeake Bay, discussion of the 10th Anniversary Rivers Conference, and an update on the tributary planning efforts.

Contact: Russell W. Baxter, Ninth Street Office Building, Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

VIRGINIA HOUSING STUDY COMMISSION

† **May 3, 1993 - 10 a.m.** – Public Hearing
Martha Washington Inn, Abingdon, Virginia.

A public hearing to receive comments on the following:

1. HJR 442 (claims pursuant to failure of FRT plywood);

2. HJR 489 (blighted and deteriorated housing);

3. HJR 163 (ongoing from 1992 - homelessness in Virginia); and

4. Other issues related to affordable housing in the Commonwealth.

Contact: Persons wishing to speak should contact Nancy M. Ambler, Executive Director, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 225-3797; additional information may be obtained from Nancy D. Blanchard, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, Ext. 565.

CHRONOLOGICAL LIST

OPEN MEETINGS

April 19
Accountancy, Board for
Health Professions, Board of
- Compliance and Discipline Committee
- Regulatory Research Committee

Housing and Community Development, Department of
Nursing, Board of
- Special Conference Committee

Psychology, Board of
Soil Scientists, Board for Professional

April 20
Accountancy, Board for
Health Professions, Board of
- Executive/Legislative Committee
- Committee on Professional Education and Public Affairs

Historic Resources, Department of
- State Review Board

Housing and Community Development, Department of
Nursing, Board of
- Special Advisory Committee

† Virginia Housing Development Authority

April 21
Agriculture and Consumer Services, Department of
- Virginia Seed Potato Board

† Education, Board of
Historic Resources, Board of
Housing and Community Development, Department of
Local Debt, State Council on
† Local Emergency Planning Committee - Henrico County
Maternal and Child Health Council
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Virginia Interagency Coordinating Council

Milk Commission, State
Nursing, Board of
- Special Advisory Committee
- Special Conference Committee

† Private Security Services Advisory Board
Real Estate Appraiser Board
- Complaints Committee

Sewage Handling and Disposal Appeals Review Board
Treasury Board

April 22
Housing and Community Development, Department of
Prevention and Children's Resources Advisory Council
† Rehabilitative Services, Board of
Voluntary Formulary Board, Virginia

April 23
† Air Pollution Control Board, State
† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

Geology, Board for
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee

Nursing, Board of
- Special Conference Committee

April 24
Natural History, Virginia Museum of
- Board of Trustees
Visually Handicapped, Board for the
Visually Handicapped, Department for the
- Advisory Committee on Services

April 26
Alcoholic Beverage Control Board
† Governor's Job Training Coordinating Council
Health, State Board of (Teleconference)
Lottery Department, State
Nursing, Board of
- Special Conference Committee

April 27
Child Day Care and Early Childhood Programs, Virginia Council on
† Marine Resources Commission
Virginia Health Services Cost Review Council

April 28
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Child Day Care and Early Childhood Programs, Virginia Council on
Compensation Board
† Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
Local Emergency Planning Committee - Gloucester County
† Manufactured Housing Board, Virginia
Mental Health, Mental Retardation and Substance Abuse Services Board, State
Nursing Home Administrators, Board of

April 29
† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Labor and Industry, Department of
- Apprenticeship Council
† Governor's Emergency Medical Services Advisory Board
- Executive Committee
Health, State Board of
† William and Mary, The College of
- Board of Visitors

April 30
Child Day Care and Early Childhood Programs, Virginia Council on
Fire Services Board, Virginia
† Governor's Emergency Medical Services Advisory Board
Health, State Board of
Virginia Student Assistance Authorities
† William and Mary, The College of
- Board of Visitors

May 1
Fire Services Board, Virginia

May 2
Fire Services Board, Virginia

May 3
† Library Board

May 4
Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council
† Waste Management Board, Virginia

May 5
Funeral Directors and Embalmers, Board of
- Informal Conference Committee
Vocational Educational, Virginia Council on

May 6
† Chesapeake Bay Commission
Local Emergency Planning Committee - Chesterfield County
Middle Virginia and the Middle Virginia Community Corrections Resources Board
- Board of Directors
Teen Pregnancy Prevention, Virginia Council on
Vocational Education, Virginia Council on

May 7
† Chesapeake Bay Commission

May 10
Alcoholic Beverage Control Board
† ASAP Policy Board - Valley
Cosmetology, Board for

May 11
Higher Education for Virginia, State Council of
† Medical Assistance Services, Board of
† Virginia Racing Commission
Virginia Resources Authority
† Water Control Board, State

May 13
Audiology and Speech-Language Pathology, Board of
Corrections, Board of
- Liaison Committee

May 18
† Virginia Museum Board of Trustees
- Collections Committee
† Real Estate Appraiser Board

May 19
† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Water Control Board, State

May 20
† Environmental Quality, Department of
Health, Department of
- Commissioner's Waterworks Advisory Committee
† Virginia Museum Board of Trustees

- Finance Committee
† Water Control Board, State
Sewage Handling and Disposal Advisory Committee
Virginia Military Institute
- Board of Visitors

May 21
Interdepartmental Regulation of Children's Residential Facilities
- Coordinating Committee

May 24
Alcoholic Beverage Control Board
† Water Control Board, State

May 25
Virginia Health Services Cost Review Council

May 26
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Compensation Board
† Water Control Board, State

May 27
† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Education, Board of

June 1
Hopewell Industrial Safety Council

June 2
† Health, Department of

June 8
Virginia Resources Authority

June 10
† Governor's Advisory Board on Aging

June 11
† Governor's Advisory Board on Aging

June 18
Interdepartmental Regulation on Children's Residential Facilities
- Coordinating Committee

June 21
† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

June 22
† Virginia Health Services Cost Review Council

June 24
† Education, Board of

June 30
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee

July 1
† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

PUBLIC HEARINGS

April 19
Auditor of Public Accounts
† Rehabilitative Services, Department of
Visually Handicapped, Department for the

April 20
† Rehabilitative Services, Department of

April 21
Education, State Board of
Visually Handicapped, Department for the

April 22
Education, State Board of
† Rehabilitative Services, Department of

April 26
Public Accounts, Auditor of

April 27
Education, State Board of
† Rehabilitative Services, Department of
† Water Control Board, State

April 28
† Education, State Board of

April 29
† Labor and Industry, Department of
- Apprenticeship Council

May 3
Auditor of Public Accounts
† Education, State Board of
† Virginia Housing Study Commission

May 4
Health, Department of

May 5
† Commerce, Board of
Housing and Community Development, Department of

May 10
† Education, State Board of

May 11
† Education, State Board of

May 12
† Commerce, Board of

May 19
Agriculture and Consumer Services, Department of
Auditor of Public Accounts
† Commerce, Board of

May 20
† Waste Management Board, Virginia

May 25
† Medical Assistance Services, Department of
Virginia Health Services Cost Review Council

May 26
† Air Pollution Control Board, State
† Commerce, Board of
† Medical Assistance Services, Department of

June 10
Transportation, Department of

June 30
Agriculture and Consumer Services, Board of

July 20
Psychology, Board of

Calendar of Events