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Symbol Key †

† Indicates entries since last publication of the Virginia Register



DEPARTMENT FOR THE AGING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Aging intends to consider repealing regulations entitled: **VR 110-01-01. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency public participation guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the department plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 2.1-373 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until April 7, 1994.

Contact: Bill Fascitelli, Senior Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2852 or toll-free 1-800-552-4464.

VA.R. Doc. No. R94-596; Filed February 15, 1994, 3:31 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Aging intends to consider promulgating regulations entitled: **VR 110-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency public participation guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the department plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 2.1-373 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until April 7, 1994.

Contact: Bill Fascitelli, Senior Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA

23219-2327, telephone (804) 225-2852 or toll-free 1-800-552-4464.

VA.R. Doc. No. R94-595; Filed February 15, 1994, 3:31 p.m.

VIRGINIA EMPLOYMENT COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-1. Definitions and General Provisions.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-632, Filed February 28, 1994, 12:32 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-2. Unemployment Taxes.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-633; Filed February 28, 1994, 12:32 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

Notices of Intended Regulatory Action

public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-3. Benefits.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-634; Filed February 28, 1994, 12:32 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-4. Adjudication.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-635; Filed February 28, 1994, 12:32 p.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Environmental Quality intends to consider promulgating regulations entitled: **VR 304-03-01. Regulation for the Early Retirement of Older Motor Vehicles.** The purpose of the proposed action is to develop procedures for the early, voluntary retirement of older motor vehicles in order to reduce mobile source air pollution in exchange for a voucher worth cash or trade-in value. The regulation will contain eligibility criteria, processing requirements and procedures for establishing mobile source air pollution reduction credits which can be banked or traded.

Public Meeting: A public meeting will be held in the Board Room of the Virginia Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia, at 7 p.m. on March 30, 1994, 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.

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 facility should contact Ms. Doneva Dalton at the Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than March 15, 1994.

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 the close of business on April 22, 1994, 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 13, 1994. If you are interested in being on the group, you are encouraged to attend the public meeting. The primary function of the group is to develop a recommended regulation for department consideration through the collaborative approach of regulatory negotiation and consensus to the extent permitted by law.

Public Hearing Plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation 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 (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

Air pollution from vehicles contributes as much as half of the total man-made pollution which forms ozone. A disproportionate amount of that pollution comes from older cars which were either not designed to burn fuel efficiently or have deteriorated to the point that they pollute heavily. According to the U.S. Congress Office of Technology Assessment, cars of 1971 or earlier vintage made up only 3.4% of the national fleet in 1990 and were driven only 2.0% of the miles. EPA estimates they created at least 6.0% of the hydrocarbon emissions, 7.5% of the

Notices of Intended Regulatory Action

carbon monoxide, and 4.7% of nitrogen oxides. They also have poor fuel economy.

In Virginia's nonattainment areas (currently Northern Virginia, Richmond and Hampton Roads), the percentage of pre-1972 cars ranges between 3.4% and 4.4% of the total vehicle population according to 1991 data from the Department of Motor Vehicles. These vehicles produce 10% to 12% of the total VOC emissions from cars and trucks weighing up to 8,500 pounds. Pre-1981 model years, ranging from 21% to 27% of the vehicle population, produce 45% to 50% of the total VOC emissions. The percentage of older cars in the vehicle population and the pollution from those cars will decrease annually as cars are retired naturally. Estimates are that approximately 20% of the pre-1981 vehicles are retired by their owners each year.

Vehicle retirement programs remove these vehicles from service, and destroy the emission system components and engine, by offering to purchase them from willing owners. The programs reduce pollution by taking these older, higher-polluting vehicles off the road sooner than they would normally have been retired. The benefits in pollution reduction and fuel savings are immediate; there may be safety benefits as well. However, the benefits are short-lived because the vehicle is being removed from service only a few years sooner, on average, than would have occurred normally. There is also the question of what amount of driving is then transferred to another vehicle and how much net pollution reduction results from replacing one vehicle with another.

In order for a motor vehicle retirement program to demonstrate an air pollution reduction benefit, it must be carefully constructed to target high-polluting vehicles which are in regular operation. Removing vehicles from operation which are not operated regularly does little to reduce pollution and is therefore not cost effective. Further, removal of vehicles in geographic areas which do not have significant air pollution problems is also not cost effective.

Alternatives:

1. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on EPA guidance.
2. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on calculations from actual emissions testing of vehicles retired and replacement vehicles.
3. Take no action to draft a regulation, which would

be contrary to the intent of the 1993 Acts of Assembly.

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 classifications 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.

Virginia must submit an air quality plan for each of these areas which shows how, and when, we will go about attaining and maintaining these air quality standards. The plans contain multiple control strategies and also must contain contingency measures should the strategies prove insufficient. Realistically, it is also important to prevent areas with relatively clean air from becoming nonattainment areas. Voluntary, proactive programs such as a motor vehicle retirement program could prove beneficial in the short term in reducing pollution generated by motor vehicles.

Some federal guidance exists for designing such programs; however, there is no federal law or regulation on this specific subject. Additional federal guidance exists regarding the generation, banking and trading of actual pollution reductions, called "pollution credits."

Statutory Authority: §§ 46.2-1802, 46.2-1804, and 46.2-1805 of the Code of Virginia.

Written comments may be submitted until the close of business on April 22, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: David J. Kinsey, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4432.

VA.R. Doc. No. R94-567; Filed February 2, 1994, 10:04 a.m.

Notices of Intended Regulatory Action



DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-33-100 (formerly VR 355-33-01). Rules and Regulations for the Licensure of Nursing Homes in Virginia.** The purpose of the proposed action is to review and update the existing regulations governing the activities and services of nursing homes and include criminal record checks for employees in keeping with § 32.1-126.01 of the Code of Virginia and the rights and responsibilities of patient discharge and transfer in keeping with § 32.1-138.1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-127, 32.1-126.01, and 32.1-138.1 of the Code of Virginia.

Written comments may be submitted until April 29, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Connie Kane, Long-Term Care Service Director, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100.

V.A.R. Doc. No. R94-651; Filed March 2, 1994, 10:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-33-200 (formerly VR 355-33-02). Regulations for the Licensure of Home Health Agencies.** The purpose of the proposed action is to amend the existing home health agency regulations to require each home health agency to develop and implement policies and procedures requiring criminal records checks for employees in keeping with § 32.1-162.9:1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-162.12, and 32.1-162.9:1 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100.

V.A.R. Doc. No. R94-653; Filed March 2, 1994, 10:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-33-300 (formerly VR 355-33-03). Regulations for the Licensure of Hospices.** The purpose of the proposed action is to amend existing hospice regulations to require each hospice to develop and implement policies and procedures requiring criminal records checks for employees in keeping with § 32.1-162.9:1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-162.5, and 32.1-162.9:1 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102.

V.A.R. Doc. No. R94-652; Filed March 2, 1994, 10:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** The purpose of the proposed action is to amend the existing hospital licensure regulations to:

A. Establish designated levels of care, with attendant standards, for the provision of neonatal services in licensed hospitals within the Commonwealth.

B. Develop a policy that prohibits offering or paying remuneration to any practitioner for referring patients to the hospital in keeping with § 32.1-135.2 of the Code of Virginia.

C. Require each hospital to develop a protocol to disseminate patient rights to patients in keeping with § 32.1-127 of the Code of Virginia.

D. Require that each licensed hospital develop and

Notices of Intended Regulatory Action

implement a protocol requiring written discharge plans for identified, substance abusing, postpartum women and their infants.

E. Include regulations that require that each licensed hospital in the Commonwealth establish a routine contact protocol to ensure that families of suitable organ and tissue donors are offered the opportunity to consider organ, tissue and eye donation.

A public hearing will be held in the future at an announced time and location.

Statutory Authority: §§ 32.1-12, 32.1-127, and 32.1-135.2 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Stephanie A. Sivert, Director, Division of Acute Care Services, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2104.

VA.R. Doc. No. R94-654; March 2, 1994, 10:35 a.m.

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: **VR 355-33-600. Rules and Regulations for the Licensure of Outpatient Maternity Hospitals.** The purpose of the proposed action is to promulgate regulations governing the activities and services of outpatient maternity hospitals. This action will establish outpatient maternity hospitals under a separate set of regulations. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102.

VA.R. Doc. No. R94-657; Filed March 2, 1994, 10:36 a.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data System.** The purpose of the proposed action is to amend regulations regarding patient level data which must be submitted by acute care hospitals for inpatient discharges and by the Virginia Department of Medical Assistance Services and the Virginia Department of Health for outpatient care data. A public hearing will be held at noon on June 28, 1994, at Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-164 and 9-166.5 of the Code of Virginia.

Written comments may be submitted until April 22, 1994.

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.

VA.R. Doc. No. R94-649; Filed March 1, 1994, 3:37 p.m.

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 promulgating regulations entitled: **VR 460-04-8.16. DMAS-122 Adjustments.** The purpose of the proposed regulation is to establish regulatory authority for guidelines for the process of adjusting the amount due from Medicaid recipients in long-term care facilities (the DMAS-122 Adjustment Process). This agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until April 20, 1994, to Mary Chiles, Manager, 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) 371-8850.

VA.R. Doc. No. R94-621; Filed February 23, 1994, 12:47 p.m.

† Notice of Intended Regulatory Action

Notices of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **VR 460-04-8.17. Kids Care.** The purpose of the proposed regulation is to establish the Kids Care Program under the administration of the Medicaid program to expand coverage for the limited benefit package of preventive and primary care services provided to uninsured children from birth to age three who have a family income between 133% and 200% of the federal poverty level who are currently not eligible for Medicaid. The agency does not intend to conduct public hearings regarding this regulatory action.

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

Written comments may be submitted until May 4, 1994, to Janet Kennedy, Policy Analyst, 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.

VA.R. Doc. R94-678; Filed March 11, 1994, 9:35 a.m.

† 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 promulgating regulations entitled: **VR 460-10-2500. Medicaid Financial Eligibility Requirements - Families and Children.** The purpose of the proposed action is to promulgate regulations which describe the methods and procedures to be used in setting standards and determining eligibility for aid to families with dependent children-related medical assistance. The agency does not intend to hold public hearings regarding this regulatory action.

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

Written comments may be submitted until May 4, 1994, to Ann Cook, 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.

VA.R. Doc. No. R94-679; Filed March 10, 1994, 10:17 a.m.

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 465-06-1. Correctional Health Assistants.** The purpose of the proposed action is to amend the educational requirements and other areas pertaining to qualifications necessary for licensure. There will be no public hearing unless requested; the amended regulations address changes in the institutions where care is provided.

Statutory Authority: §§ 54.1-2400, 54.1-2949, 54.1-2950, 54.1-2951, and 54.1-2952 of the Code of Virginia.

Written comments may be submitted until May 6, 1994, to Hilary H. Connor, M.D., 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-726; Filed March 15, 1994, 4:40 p.m.

BOARDS OF NURSING AND MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with their public participation guidelines that the Board of Nursing and the Board of Medicine intend to consider amending regulations entitled: **VR 495-02-1 and VR 465-07-1. Regulations Governing the Licensure of Nurse Practitioners.** The purpose of the proposed action is to conduct a biennial review of regulations which will include consideration of recommendations of several studies conducted in the state within the past several years. A public hearing will be held on any proposed regulations developed as a result of the consideration described in the purpose of this intended regulatory action.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Written comments may be submitted until April 15, 1994.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

VA.R. Doc. No. R94-587; Filed February 2, 1994, 3:39 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-01. Water Quality Standards.** The purpose of the proposed action is to consider modifying VR 680-21-01

Notices of Intended Regulatory Action

3 C 1 of the Antidegradation Policy to increase the participation of local governments in the nomination and designation process for exceptional waters. The State Water Control Board intends to consider amending the regulation to offer local governments the opportunity to determine if a proposed exceptional waters nomination is consistent with local comprehensive planning as part of the process.

Basis and statutory authority: Section 62.1-44.15(a) of the Code of Virginia authorizes the board to establish such standards of quality and policies for any state waters consistent with the general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established.

Estimated impact: Impacts resulting from designations of exceptional waters will be primarily upon the local governments in the area where the exceptional waters are located. No new or increased VPDES discharges will be allowed into these exceptional waters.

Alternatives: Alternatives under consideration include whether the board should propose amendments to VR 680-21-01 3 C 1 regarding the role of local governments in the designation procedures for exceptional waters or leave the section unchanged.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of stated alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. In addition, the board's staff will hold public meetings at 7 p.m. on Wednesday, March 23, 1994, in the Board Room, Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, and at 7 p.m. on Thursday, March 24, 1994, in the Roanoke County Board of Supervisors Meeting Room, First Floor, 5204 Bernard Drive, Roanoke, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: The meetings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, March 1, 1994.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendment

after it is published in The Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold an evidential proceeding (formal hearing) on the proposal after it is published in The Register of Regulations.

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

Written comments may be submitted until 4 p.m. on April 5, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Jean Gregory, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

VA R. Doc. No. R94-526; Filed January 26, 1994, 1:04 p.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Public Hearing Date: May 11, 1994 - 10 a.m.

Written comments may be submitted through June 3, 1994.

(See Calendar of Events section for additional information)

Basis: Section 53.1-45.1 of the Code of Virginia provides that the Director of the Department of Corrections, with the approval of the Governor, may enter into an agreement with a public or private entity to operate a work program in a state correctional facility for prisoners confined therein. The provisions of such proposed agreements are to be submitted for review to a committee appointed by the Governor for that purpose. Moreover, the Board of Corrections shall promulgate regulations governing the form and review process for proposed agreements.

Also, § 53.1-5 of the Code of Virginia charges the board with developing, adopting, and promulgating rules and regulations as may be necessary to carry out laws of the Commonwealth administered by the Director or the Department of Corrections.

Purpose: These regulations govern the form and review process for proposed agreements between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for inmates confined therein.

Substance: Part I establishes definitions and purpose of the regulations. Part II explains the review process to be utilized in evaluating proposed agreements. Components of the review process include the role of the Department of Corrections, Board of Corrections, Governor-appointed committee, and Office of the Attorney General. Part III of the regulations defines the criteria by which the proposed agreements are evaluated. Besides the criteria specifically listed, the regulations also require proposed agreements to meet §§ 53.1-41 through 53.1-62 of the Code of Virginia. Part III states that all criteria listed be met before the Governor-appointed committee approves a proposed agreement.

Issues: These regulations should prove advantageous to the department, participating private entities, and inmates. The review process described in the regulations provides an orderly system for proposed agreements to be received and forwarded to the board and committee. The criteria outlined in the regulations dictate work standards which are beneficial to the inmate, and financial and economic standards directed to the public or private entity which lend to the agreement's stability. The joint venture work programs themselves will increase the department's visibility within the private sector, thus improving opportunities for individuals to obtain post-incarceration employment. The programs will also allow the department to have access to resources in order to expand facilities, enter new markets, or develop new products. These regulations should not provide any disadvantages.

Impact: These regulations will place a slight work burden of reviewing proposed agreements upon departmental staff and upon the Office of the Attorney General. These regulations will create no fiscal impact.

Summary:

These regulations govern the form and review process for proposed agreements between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for inmates confined therein. The regulations establish both the review process and criteria for evaluating proposed agreements.

VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Agreement" means a legal arrangement between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for prisoners confined therein.

"Board" means the Board of Corrections.

"Committee" means the group appointed by the Governor which reviews any proposed agreement between the Director of the Department of Corrections and a

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public or private entity to operate a work program in a state correctional facility for prisoners confined therein. The committee consists of representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, the Office of the Secretary of Commerce and Trade, and the Office of the Secretary of Public Safety.

"Department" means the Department of Corrections.

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

§ 1.2. Purpose.

These regulations govern the form and review process for proposed agreements between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for inmates confined therein.

PART II. REVIEW PROCESS.

§ 2.1. Review process.

A. The department shall receive any proposed agreement directly from the public or private entity, and shall conduct initial research and evaluation of the proposed agreement.

B. The department shall submit the proposed agreement with a submission package to the board. The submission package shall include, at a minimum:

1. A prospectus of the public or private entity.
2. A description of the size and scope of the proposed operation.
3. An assessment of the project's financial viability.
4. A recommendation for entering or not entering into the proposed agreement.
5. Draft formal agreement papers, if the department recommends entering into the agreement.

C. The board shall review the proposed agreement and submission package and submit the package to the committee with a recommendation for entering or not entering into the agreement.

D. The committee shall evaluate the proposed agreement according to the criteria listed under § 3.1.

E. Upon approval by the committee, any contractual documents implementing the agreement shall be forwarded to the Office of the Attorney General to ensure compliance with state statutes.

F. Upon the assurance of the Office of the Attorney General that the agreement is in compliance with state statutes, the Governor shall review the agreement.

G. Upon the Governor's authorization, the director and the public or private entity may sign the agreement.

PART III. CRITERIA.

§ 3.1. Criteria.

A. The committee shall review the provisions of any proposed agreement according to the following criteria:

1. The proposed agreement shall provide adequate job skills to inmate participants. Any proposed agreement which requires relatively unskilled labor may be acceptable providing the work project establishes good work habits.
2. The public or private entity shall be environmentally sound, with appropriate certification, as required by applicable state and federal regulations.
3. The public or private entity shall provide prevailing or minimum wage, whichever is applicable.
4. The public or private entity shall provide Equal Employment Opportunity for all inmates involved in the proposed agreement.
5. The proposed agreement shall demonstrate financial viability.
 - a. If the department acts as a subcontractor in the proposed agreement, the proposed agreement shall be evaluated by its capability both to meet the required goods or services as well as to provide an acceptable rate of return to the department.
 - b. If the department acts as a supplier of labor in the proposed agreement, the proposed agreement shall be evaluated upon its capability to provide a gross margin both to cover the expenses of the department as well as to generate a sufficient return on investment to the department.
6. The proposed agreement shall not displace civilian workers.
7. Any rent paid to the department for space occupied by the participating public or private entity shall be at a reasonable rate.
8. The product produced by the proposed agreement may be sold on the open market.
9. The proposed agreement shall meet any provisions listed in §§ 53.1-41 through 53.1-62 of the Code of

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Virginia pertaining to "Employment and Training of Prisoners."

B. All criteria listed in § 3.1 A shall be met before the committee approves a proposed agreement.

VA.R. Doc. No. R94-708; Filed March 16, 1994, 10:56 a.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Title of Regulation: VR 240-04-4. Crime Prevention Specialists.

Statutory Authority: §§ 9-170, 9-173.14 and 9-173.15 of the Code of Virginia.

Public Hearing Date: June 10, 1994 - 10 a.m.

Written comments may be submitted until June 6, 1994.

(See Calendar of Events section for additional information)

Basis: The crime prevention specialist legislation (§§ 9-173.14 and 9-173.15 of the Code of Virginia) states that ... "the Department of Criminal Justice Services shall promulgate regulations establishing minimum standards for certification of Crime Prevention Specialists."

Crime prevention is continuing to grow as a specialty within law-enforcement agencies. There are six performance standards for crime prevention included in the Compulsory Minimum Training Standards for Law-Enforcement Officers, but those standards address very basic crime prevention skills. Delivery of crime prevention services requires knowledge of and experience with mechanical and electronic locking and security systems, lighting, media relations, public speaking, crime analysis, cultural sensitivity, civil liability, construction techniques, community planning and other topics. While certification as a crime prevention specialist is voluntary, these regulations set a standard for the skill and experience preferred for law-enforcement employees delivering crime prevention services.

Purpose: The purpose of the proposed regulation is to establish reasonable minimum standards for law-enforcement employees certified as crime prevention specialists, concerning knowledge of and experience in providing crime prevention services.

Substance: The proposed regulations establish experience and training requirements for staff of local and state law-enforcement employees seeking certification as a crime prevention specialist by the Department of Criminal Justice Services.

Issues: The chief law-enforcement officer of any local or state law-enforcement agency may elect to have employees of his agency certified as a crime prevention specialist.

The crime prevention specialist is a voluntary program. Law-enforcement executives are not mandated to have employees certified as crime prevention specialists, and employees who are not certified as crime prevention specialists are in no way prohibited from performing crime prevention duties, unless the law-enforcement executive chooses to establish a certification policy for his agency. Sworn as well as civilian staff may be designated as a crime prevention specialist.

No state funds are available to award any type of financial incentive or adjustment for law-enforcement employees designated as crime prevention specialists. Local or state law-enforcement agencies may, at their own option, provide some type of incentive pay for employees who become certified.

There are no fees or other direct costs associated with application for certification.

Impact: All local and state law-enforcement agencies are authorized to have employees certified as crime prevention specialists. This represents approximately 250 law-enforcement agencies. Over 300 employees within law-enforcement agencies are currently providing crime prevention services. Many of these individuals meet or exceed the minimum standards in the proposed regulations. It is estimated that in the first year of operation, 100 law-enforcement employees may apply for certification.

Introductory and advanced crime prevention training courses will be provided by the Department of Criminal Justice Services to law-enforcement agencies and law-enforcement training academies at little or no cost.

The certification process will be administered with existing staff and resources of the Crime Prevention Center and Training Division within the Department of Criminal Justice Services.

Summary:

The proposed Crime Prevention Specialist Regulations establish the requirements for the chief executive of a local or state law-enforcement agency to designate staff within his agency for certification as a crime prevention specialist by the Department of Criminal Justice Services.

The duty of a crime prevention specialist is to provide information and assistance to citizens, businesses and organizations concerning personal safety, security of property, Neighborhood and Business Watch, employee security and other matters relating to reduction of criminal opportunity.

Designating staff for certification as a crime prevention specialist is done at the discretion of the chief law-enforcement officer. There is no mandate for law-enforcement agencies to designate staff as

crime prevention specialists and there is no requirement to be a crime prevention specialist in order to perform crime prevention duties. Sworn as well as civilian employees may apply for certification.

The proposed regulations set forth experience and training requirements for law-enforcement employees who apply to be certified as a crime prevention specialist.

VR 240-04-4. Crime Prevention Specialists.

§ 1. Definitions.

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

"Agency administrator" means any chief of police, sheriff, or any agency head of a local or state law-enforcement agency.

"Crime prevention services" means providing for the anticipation, recognition, and appraisal of a crime risk and the initiation of an activity to remove or reduce the opportunity for crime.

"Department" means the Department of Criminal Justice Services.

"Employee" means any sworn or civilian individual employed by a local or state law-enforcement agency.

"General law-enforcement instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, contained in VR 240-01-12 (§ 1), and is eligible to instruct, teach or lecture approved or mandated training.

"Law-enforcement agency" means any government agency or identifiable subunit which has as its principal duty or duties the prevention, detection, and investigation of crime; the apprehension, detection, and prosecution of alleged offenders.

§ 2. Duties of a crime prevention specialist.

The duties of a crime prevention specialist are:

1. To provide citizens within his jurisdiction information concerning personal safety and the security of property, and other matters relating to the reduction of criminal opportunity.
2. To provide business establishments within his jurisdiction information concerning business and employee security, and other matters relating to the reduction of criminal activity.
3. To provide citizens and businesses within his jurisdiction assistance in forming and maintaining

neighborhood and business watch groups and other community-based crime prevention programs.

4. To provide assistance to other units of government within his jurisdiction in developing plans and procedures related to the reduction of criminal activity within government and the community.

5. To promote the reduction and prevention of crime within his jurisdiction and the Commonwealth.

§ 3. Eligibility.

A. Any employee of a local or state law-enforcement agency is eligible to be trained and certified as a crime prevention specialist.

B. The agency administrator of any local or state law-enforcement agency may designate one or more employees in his department or office to be trained and certified as a crime prevention specialist. Applicants for recertification shall be recommended by agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Certification Application - Form A.

C. These regulations do not limit or prohibit the chief executive of any local or state law-enforcement agency from assigning personnel to crime prevention tasks who are not certified as crime prevention specialists.

§ 4. Crime prevention specialist certification requirements.

A. The following requirements must be met to be certified as a crime prevention specialist. The applicant shall have:

1. Been certified as a general law-enforcement instructor within the past five years, or successfully completed a comparable instructor development course approved by the department.
2. Received 40 hours of approved introductory crime prevention training. Completion of the following compulsory minimum training topics is required for designation as a crime prevention specialist.
 - a. Theory and Practice of Crime Prevention
 - b. Neighborhood Watch
 - c. Home and Business Security
 - d. Security Liability
 - e. Security Hardware (locks, lighting, and alarms)
 - f. Personal Safety
 - g. Crime Analysis

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3. Received 80 hours of additional crime prevention training within the past five years of the date of application. This additional training must address at least two of any of the following topics.

- a. Crime Prevention Through Environmental Design
- b. Community Crime Prevention Planning
- c. Advanced Data Collection and Analysis
- d. School Safety and Security
- e. Security Lighting
- f. Computer Security
- g. Managing Volunteers
- h. Grant and Proposal Writing
- i. Legislation, Ordinance and Regulation Development
- j. Prevention of Youth Violence
- k. Prevention of Family Violence
- l. Drug Abuse Prevention
- m. Public Speaking
- n. Media Relations
- o. Other topics approved by the department

4. At least three years experience in a criminal justice agency.

5. At least one year experience, within the past five years of the date of application, in providing crime prevention services. Such experience shall have included:

- a. Developed and maintained Neighborhood or Business Watch groups.
- b. Conducted security assessments of homes and businesses.
- c. Public presentations on home or business security and personal safety.
- d. Distributed crime prevention information to the public.
- e. Other experience approved by the department.

B. The department retains the right to waive all or part of the prescribed training requirements when relevant crime prevention certifications awarded by recognized

criminal justice or security organizations or by other state criminal justice agencies are provided.

Crime prevention specialist certifications awarded by organizations or other states will be reviewed on a case-by-case basis.

§ 5. Recertification.

A. Recertification is required every three years.

B. Applicants for recertification shall be recommended by the agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Recertification Application - Form B.

C. Applicants for recertification must complete 40 hours of additional crime prevention training since initial designation as a crime prevention specialist. This additional training must address at least one of the following topics.

1. Crime Prevention Through Environmental Design
2. Community Crime Prevention Planning
3. Advanced Data Collection and Analysis
4. School Safety and Security
5. Security Lighting
6. Computer Security
7. Managing Volunteers
8. Grant and Proposal Writing
9. Legislation, Ordinance and Regulation Development
10. Prevention of Youth Violence
11. Prevention of Family Violence
12. Drug Abuse Prevention
13. Public Speaking
14. Media Relations
15. Other topics approved by the department

D. Individuals whose certification expires shall comply with the requirements set forth in § 4 and meet any certification requirements in effect at that time.

E. The department retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury

2. Military service

3. Special duty required and performed in the public interest

4. Leave without pay or suspension pending investigation or adjudication of a crime

5. Any other reason documented by the agency administrator

F. Requests for extensions of the time limit must be requested prior to certification expiration.

V.A.R. Doc. No. R94-707; Filed March 15, 1994, 11:12 a.m.

FORM A
CRIME PREVENTION SPECIALIST
CERTIFICATION APPLICATION

Department of Criminal Justice Services

Applicant's Name: _____

Employing Agency: _____

Address: _____

Recommended by: _____

Signature: _____

Telephone: _____ Date: _____

A. Have you been certified by DCJS as a General Law Enforcement Instructor within the past five (5) years?

YES ___ NO ___

If you answered "NO" to question A, have you completed a comparable instructor development course?

YES ___ NO ___ If YES, list type of course, dates of attendance, and who provided training.

B. Have you completed forty (40) hours of introductory crime prevention training?

YES ___ NO ___ If YES, when and where did you complete your training:

Training provided by: _____

C. Have you received eighty (80) hours of additional crime prevention training in the past five (5) years?

YES ___ NO ___ If YES, please provide the following information:

Dates	Hours	Training provided by
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM B
CRIME PREVENTION SPECIALIST
RECERTIFICATION APPLICATION

Department of Criminal Justice Services

Applicant's Name: _____

Employing Agency: _____

Address: _____

Recommended by: _____

Signature: _____

Telephone: _____ Date: _____

Employer at time of initial certification: _____

Date of initial certification: _____

A. Have you received forty (40) hours of additional crime prevention training since initial certification as a Crime Prevention Specialist or within the past three (3) years?

YES ___ NO ___ If YES, please provide the following information:

Dates	Hours	Training provided by
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Are you requesting an extension of the time limit before the Crime Prevention Specialist certification expires?

YES ___ NO ___ If YES, please justify the extension request.

D. Do you have at least three years (3) of experience working in a criminal justice agency?

YES ___ NO ___ If YES, please list experience:

Dates	Agency
_____	_____
_____	_____
_____	_____

E. Do you have at least one (1) year of experience, within the past five (5) years, in providing crime prevention services?

YES ___ NO ___

F. Do you possess a crime prevention related designation from a nationally recognized organization or from another state?

YES ___ NO ___ If YES, please provide the following:

Designation name: _____

Designating organization or state: _____

Date issued: _____

PLEASE ATTACH DOCUMENTATION FOR ALL COMPLETED TRAINING
TO THIS APPLICATION AND RETURN TO:

Virginia Crime Prevention Center
Department of Criminal Justice Services
805 East Broad Street
Richmond, VA 23219

(804)786-8467

Proposed Regulations

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

Title of Regulation: VR 325-04-2. Motorboat Numbering.

Statutory Authority: § 29.1-701 of the Code of Virginia.

Public Hearing Date: May 4, 1994 - 7 p.m.

Written comments may be submitted until June 10, 1994.

(See Calendar of Events section for additional information)

Basis: The basis for this regulation is § 29.1-701 of the Code of Virginia which authorizes the board to adopt rules and procedures for the implementation of the provisions of Chapter 7 of Title 29.1 of the Code of Virginia, entitled "Boating Laws."

Purpose: The purpose of this proposed regulation is to enable the agency to provide motorboat registration information to the commissioners of revenue in compliance with § 58.1-3511 of the Code of Virginia and to help provide relief from personal property taxation to persons on active military duty as provided for in federal law.

Substance and Issues: The purpose of this proposed action is two-fold. The first is to enable the Department of Game and Inland Fisheries to come into full compliance with the Code of Virginia by requiring boat owners to register their boats according to the locality where the motorboat will be "normally garaged, docked, or parked." The second purpose is to require affected motorboat owners to notify the department when they are no longer on active military duty within the Commonwealth of Virginia.

Currently § 1 requires individuals applying for a certificate of number for a motorboat to indicate on the application the "locality of principal use." This information is used by the Department of Game and Inland Fisheries (DGIF) to report annually to the commissioners of revenue a listing of motorboats registered in each commissioner's locality. This list is used by the commissioners to issue personal property taxation notices. The use of "locality of principal use" as the criteria for the issuance of personal property taxation notices is not in conformity with the Code of Virginia.

Section 58.1-3511 of the Code requires commissioners of revenue to use the locality in which the boats are "normally garaged, docked, or parked" as the basis for their assessments of personal property taxes on motorboats. Since many motorboats are used in localities which are different than the locality in which the boat is normally kept, reporting registrations to the commissioners based on the "locality of principal use" means that commissioners of revenue are assessing boats based on where the boats are used, not where they are kept. This is not in conformity with the Code. Adoption of this proposed regulation change will enable the department to gather

information on and report motorboat registrations to the commissioners of revenue in conformity with § 58.1-3511.

The Soldiers' and Sailor's Civil Relief Act provides certain exemptions from local personal property taxation assessments for individuals who are on active military duty. DGIF does not now ask an individual to indicate military status at the time an application is submitted for a motorboat registration. As a result, residents who are eligible for assessment relief are required to complete additional paperwork at the local level. The agency has been requested by representatives of the commissioners of revenue to collect military status information and report it to them annually. Such reporting will enable the commissioners to provide the assessment relief envisioned by federal law without requiring their constituents to complete additional paperwork at the local level. Regulatory action will give the Department of Game and Inland Fisheries necessary authority to require individuals to notify the agency in the event there is a change in military status. This is necessary to prevent individuals from continuing to receive assessment relief once they go off active duty status and to enable the agency to ensure the accuracy of the reports sent to the commissioners.

Estimated Impact:

A. Entities Impacted. The proposed regulation will potentially impact all motorboat owners in the Commonwealth. However, no data is available to quantify the actual number affected.

B. Fiscal Impact.

1. Costs to Affected Entities. It is expected that this proposal will have a financial impact on the regulated public. Because motorboats are presently reported to the commissioners of revenue based on the locality of principal use, many individuals pay personal property taxes on their boats in a county other than where they live. By changing the reporting basis to the locality where the boat is normally garaged, docked, or parked, individuals will be more likely to pay personal property taxes where they live than where they use their boats. This will cause some individual's tax payments to go down and others to go up. No data is available to quantify this potential impact.

2. Costs to Agency. The agency does not expect to incur any appreciable costs in association with this regulation.

3. Source of Agency Funds. Any costs incurred by the agency in association with this regulation will be borne within existing funds.

4. Benefits. Adoption of this regulation will enable the commissioners of revenue to issue personal property taxation notices in accordance with the Code of Virginia.

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5. Small Business Impact. It is anticipated that implementation of this regulation will have no impact on small businesses.

Affected Locality: It is expected that this proposed regulation will have an impact on a number of localities. Changing the basis for reporting motorboat registrations to commissioners of revenue for personal property taxation assessment purposes will cause a realignment of personal property tax revenues among various localities. Some localities' revenue will increase, some will decrease, and some will remain the same. No data is available to quantify this potential impact nor to determine which localities may be impacted to a greater or lesser degree than any other.

Applicable Federal Requirements: U.S. Coast Guard regulations governing states' registration and titling programs require motorboats to be registered in the "state of principal use." Federal regulations do not address the manner in which states track the disposition of the motorboats internally to the state. Adoption of this regulation is, therefore, in conformity with existing federal requirements.

Informational Proceeding: A public hearing (informational) will be held on Wednesday, May 4, 1994, at 7 p.m. in the Main Conference Room of the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230. A question and answer period will be held one-half hour prior to the informational proceeding at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time. Additional public hearings will be held in late May and early June 1994 in the Roanoke, Norfolk, and Fredericksburg areas. Information on specific times and locations will be announced in each area prior to the events.

Accessibility to Persons with Disabilities: The public hearings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Karen Tuck, Administrative Services Division, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-1000 (V/TDD). Persons needing interpreter services for the deaf must notify Ms. Tuck no later than Monday, April 18, 1994.

Request for Comments: The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the guidelines. Written comments should be directed to Mark D. Monson, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, no later than the close of business Friday, June 10, 1994.

Other Information: The proposed regulation is being considered at the request of the commissioners of revenue and has been discussed with them at their annual meeting

in August 1993.

It should be noted that the public participation process being used by the Department of Game and Inland Fisheries for this regulation is different than the process used by the department for the consideration of wildlife management regulations. Persons interested in commenting on the proposed motorboat registration regulation change need to follow the provisions of the department's Public Participation Guidelines (PPGs) adopted in accordance with the Administrative Process Act. Copies of the department's PPGs are available upon request.

Summary:

Section 58.1-3511 of the Code of Virginia requires commissioners of revenue to assess for personal property taxation purposes motorboats based on where the boats are "normally garaged, docked, or parked." Currently § 1 of this regulation requires individuals applying for a certificate of number for a motorboat to indicate on the application the "locality of principal use," not where the boats are "normally garaged, docked, or parked." Adoption of this proposed amendment to § 1 of VR 325-04-2 will enable the department to gather the information necessary to report motorboat registrations to the commissioners of revenue in conformity with § 58.1-3511.

The Soldiers' and Sailor's Civil Relief Act provides certain exemptions from local personal property taxation assessments for individuals who are on active military duty. The Department of Game and Inland Fisheries does not now ask an individual to indicate military status at the time an application is submitted to register a motorboat. As a result, residents who are eligible for assessment relief are assessed personal property taxes and required to complete additional paperwork at the local level. In rectifying the problem, amending § 5 of VR 325-04-2 will enable the department to provide the commissioners of revenue needed military status information so personal property taxes will not be assessed qualifying individuals. This action will also give the Department of Game and Inland Fisheries necessary authority to require individuals to notify the agency in the event there is a change in military status.

VR 325-04-2. Motorboat Numbering.

§ 1. Application for certificate of number.

An application or renewal application for a certificate of number for a motorboat, as required by Chapter 7 of Title 29.1 of the Code of Virginia, shall contain the following information: The name and address of owner, the county or city where such boat is principally used, normally garaged, docked or parked, present number on boat (if any), hull material (wood, fiberglass, metal, inflatable, other), type of propulsion (outboard, inboard and inboard/outboard, auxiliary sail-outboard, inboard), type of

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fuel (gas, diesel, electric), make and year built (if known), length overall, statement as to use (pleasure, livery, dealer, manufacturer, commercial passenger, commercial fishing, commercial other), a *statement by applicant of current military status*, a statement of ownership by applicant and signature of owner.

§ 2. Information shown on certificate.

The certificate of number for a motorboat shall show the following: The name and address of owner, number issued, make, hull material, type of propulsion, length overall, use and expiration date.

§ 3. Numbering pattern.

The motorboat number assigned shall consist of the symbol "VA" identifying the Commonwealth followed by not more than four arabic numerals and two capital letters, in sequence, separated by a hyphen or equivalent space in accordance with the serial numerically and alphabetically; e.g., "VA-1-A" or "VA-1234-BB." Since the letters "I," "O" and "Q" may be mistaken for arabic numbers, all letter sequences using "I," "O" and "Q" shall be omitted.

§ 4. Display of numbers.

The numbers assigned for a motorboat shall be painted on or attached to each side of the forward half of the vessel to which issued in such a position as to provide clear legibility for identification; provided, that on vessels so configured that a number on the hull or superstructure would not be easily visible, the number must be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel. The numbers shall read from left to right and shall be in block characters of good proportion not less than three inches in height. The numbers shall be a color which will contrast with the color of the background and so maintained as to be clearly visible and legible; i.e., dark numbers on a light background or light numbers on a dark background.

§ 5. Report of transfer of ownership of motorboat; notification of theft or recovery of vessel, or loss or destruction of certificate ; *and notification of change in military status* .

Whenever a motorboat for which there exists a certificate of number changes ownership, the seller shall report such transfer to the department on a form provided by the department. The holder of a certificate of number shall notify the department within 15 days of the theft or recovery of a vessel, *or the loss or destruction of a valid certificate of number , or when there has been a change in military status* .

§ 6. Application for duplicate certificate of number.

In the event of loss, a duplicate certificate of number

may be applied for on a form to be provided by the department, accompanied by a fee of \$.50. Not more than one certificate for a motorboat number may be in existence at any time.

§ 7. When certificate invalid; removal of numbers and surrender of certificate.

A certificate of number shall be invalid:

1. When the vessel is documented, or required to be documented; or
2. Sixty days after the vessel is no longer principally used in the Commonwealth by when the certificate was issued; or
3. The owner loses his interest in the vessel through legal process; or
4. The certificate of number is cancelled and recalled by the department pursuant to § 29.1-702A of the Code of Virginia.

When a certificate of number becomes invalid for any reason the person whose name appears on the certificate as owner shall remove the numbers from the vessel, and, within 15 days, surrender the invalid certificate to the department.

VA.R. Doc. No. R94-691; Filed March 15, 1994, 9:21 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: The following regulations are exempted from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property.

Title of Regulation: VR 394-01-103. Multifamily Loan Program.

Statutory Authority: §§ 36-137 and 36-141 et seq. of the Code of Virginia.

Public Hearing Date: May 6, 1994 - 1 p.m.

Written comments may be submitted until May 6, 1994.

(See Calendar of Events section for additional information)

Basis: Sections 36-137 and 36-141 et seq. of the Code of Virginia establish the basis for these guidelines.

Purpose: The proposed Multifamily Loan Program guidelines provide the basic technical and administrative framework for the Department of Housing and Community

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Development to administer the program.

Substance: The proposed procedures include the following changes from the regulations that appeared on September 9, 1991.

1. Rehabilitation projects must propose at least \$5,000 of construction costs on average per unit.
2. The department may establish one or more application rounds per year and allocate available funds between the rounds and to application pools as best meet the goals of the program.
3. Interest rates will average approximately 5.0%, but may be as low as 2.0% depending on the project characteristics and need.
4. The department reserves the right to charge a commitment fee, not to exceed 2.0% of the loan principal.
5. The scoring criteria for projects applying to the Virginia Housing Partnership's Multifamily Loan Program have been revised.
6. The guidelines have been modified to incorporate the requirements for federal HOME funds which are now available under the Multifamily Loan Program.

Impact: The regulations impact potential applicants for the Virginia Housing Partnership's Multifamily Loan Program, which makes available low interest loans and grants for the rehabilitation and new construction of rental housing for low- and moderate-income Virginia residents.

Summary:

These guidelines establish the administrative framework for the Virginia Housing Partnership's Multifamily Loan Program as administered by the Department of Housing and Community Development. The guidelines include the scoring criteria for selecting projects and the terms and conditions under which loans and grants will be available. They amend the guidelines published by the department on September 9, 1991. The guidelines have been changed to (i) establish minimum rehabilitation requirements, (ii) allow the department to distribute available funds to more than one application round, (iii) specify most likely interest rates, (iv) authorize the department to charge a commitment fee, and (v) revise the distribution of scoring points.

VR 394-01-103. Multifamily Loan Program.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Acquisition" means the purchase of real property.

"Applicant" means an individual, incorporated nonprofit, for-profit, or government entity, that makes application for funds under the Virginia Housing Partnership Fund.

"Application" is the written request, as published by the Department of Housing and Community Development, for a loan or grant funding under the Virginia Housing Partnership Fund.

"Application date" means the date on which a completed application is received by DHCD.

"Appraised value" means the monetary worth of property as determined by an appraiser.

"Area median income" means the median income established by HUD for various areas.

"Assessed value" is a monetary worth of the facility/property as determined by the real estate assessment office of the local government where the same is located for tax purposes. (The applicable assessed value shall be that value in effect as of the date of the application.)

"Borrower" means the individual, for-profit, nonprofit or government entity that has been approved for funding under the Virginia Housing Partnership Fund.

"DHCD" means the Department of Housing and Community Development.

"Energy grant" means a grant, available as a result of federal energy litigation, which may be awarded to pay for certain energy-related improvements.

"Energy-related improvements" means physical improvements to structures which are being rehabilitated which contribute to fuel cost savings and overall less energy consumption, and which have been so designated by this department.

"Fund" means the Housing Partnership Revolving Loan Fund.

"General improvements" means additions, alterations, renovations, or repairs made for the purpose of making housing more habitable and more desirable to live in. These improvements must be permanent. Improvements shall not include materials, fixtures, or landscapes of a type or quality which exceed that customarily used in the locality for properties of the same general type as the property to be improved.

"Grant" means funds provided to program recipients

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under the Virginia Housing Partnership Fund which, assuming satisfactory compliance with all terms and conditions, will not require repayment.

"Grant agreement" means the contract between DHCD and the project sponsor containing the terms and conditions provided for within the program.

"Gross income" is the total income from all sources and before taxes or withholdings of all residents residing in a housing unit, age 18 or older.

"HQS" means the Housing and Urban Development Section 8 Housing Quality Standards.

"Household" means all persons related or unrelated living together as one economic unit.

"HUD" means the Department of Housing and Urban Development.

"Individual" is a single person who submits an applicant pursuant to the program guidelines.

"Loan" means money lent with interest for a specified period of time.

"Loan note" means the agreement between DHCD and the project sponsor pertaining to the terms and conditions governing funding by the Virginia Housing Partnership Fund, including repayment provisions.

"Lower-income" means 80% of median income for the service area as established by the U.S. Department of Housing and Urban Development also referred to as LMI.

"Multifamily" means property with two or more complete dwelling units.

"Oil overcharge expenditure trust fund" are the United States Department of Energy moneys awarded to the Commonwealth for specific purposes to resolve alleged pricing violations in effect between 1973 and 1981 by crude oil providers; also referred to as Oil Overcharge Funds.

"Program" means the plan for funding under the Multifamily Loan Program.

"Project sponsor" means an individual, family, nonprofit, for profit or incorporated organization that enters into a contract/agreement with DHCD to undertake activities in accordance with the program guidelines.

"Rehabilitation" means significant physical improvements/repairs to a facility which will secure it structurally, correct building, health or fire safety codes related defects, increase energy efficiency and assure safe and sanitary operation.

"Set-aside" means funds reserved for a specified period,

by the department, to finance a multifamily project.

"Site control" means the possession of or authorization to use real property by means of ownership, lease or option.

"State" or "Commonwealth" means the Virginia Department of Housing and Community Development, also referred to as DHCD and the department.

"VHDA" means Virginia Housing Development Authority.

"VHPF" means the Virginia Housing Partnership Fund.

PART II. ELIGIBILITY.

§ 2.1. Eligible applicants.

1. Nonprofit organizations;
2. Governmental entities, including local redevelopment and housing authorities;
3. Private, for-profit organizations; or
4. Individual investors.

§ 2.2. Eligible activities.

A. Loan funds may be used to rehabilitate existing multifamily housing, to acquire and rehabilitate existing multifamily housing, to construct new multifamily housing, or to acquire existing low-income housing which can be proven to be at risk of falling out of the LMI housing stock.

A: B. In rehabilitation projects, property must be brought up to HUD Section 8 Housing Quality Standard (HQS).

B: C. Energy improvements which exceed HUD Section 8 Housing Quality Standards are encouraged. Eligible energy improvements are authorized and published by the state.

C: D. Funds may also be used for other General Improvements.

D: E. Luxury improvements are prohibited.

E: F. Upon completion of a new construction project, the property must meet the Uniform Statewide Building Code.

F: G. Reasonable fees and expenses incurred in the process of obtaining the loan may be financed in the loan, including credit report fee, appraisals, surveys, engineering and architectural fees, legal fees, recording costs, and commitment fees.

G: H. DHCD will accept requests for waivers to one or

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more of the program requirements on a case-by-case basis. In granting such a waiver, DHCD will look at the merits of each case relative to need, benefits, and intent of the program.

H. I. Construction financing will be available only when the sponsor can demonstrate that alternative financing is not available. Construction financing will only be disbursed in order of lien priority.

I. J. Refinancing of existing debt may be available if necessary for project feasibility.

§ 2.3. Eligible projects.

A. All projects must contain two or more units.

B. To qualify as a rehabilitation project, *the following must be met: (i) 75% of the exterior walls must be retained, (ii) on average at least \$5,000 of construction costs must be expended per unit, and (iii) at least one major building system must be replaced or significantly repaired.*

C. Conversion of commercial or institutional properties to residential use is permitted as long as the property is in conformance with zoning and other local requirements for multifamily use upon completion of the project.

D. No improvements to non-LMI units will be eligible for Multifamily Loan Program funds.

E. Existing properties must have existing HUD Section 8 Housing Quality Standards (HQS) violations or incipient violations prior to rehabilitation, unless otherwise approved by the state.

PART III.

OCCUPANCY AND RENT REQUIREMENTS.

§ 3.1. Occupancy requirements.

The target population for occupancy of multifamily housing funded with Multifamily Loans is low and moderate income persons and families. The percentage of units which must be occupied by low and moderate income persons varies based upon the income level served by the project. A minimum threshold has been set as follows, and may be exceeded at the option of the project sponsor. All occupancy requirements must be met for the full term of the loan.

Project sponsors must select one of three occupancy options at the time of application and must comply with it for the term of the loan:

OPTION 1:

A minimum of 20% of the units must be reserved for households with incomes at 50% or less of the area median income as established by HUD.

OPTION 2:

A minimum of 40% of the units must be reserved for households with incomes at 60% or less of the area median income as established by HUD.

OPTION 3:

A minimum of 80% of the units must be reserved for households with incomes at 80% or less of the area median income as established by HUD.

§ 3.2. Rent requirements.

The owner must inform the Commonwealth of any changes in rents charged within the project. Annual rent increases may not exceed the percentage increase in the area median income as published annually by HUD. State approval is required in advance if proposed rents on low- and moderate-income units exceed the percentage increase in area median income. *Decreases in the area median income, as determined by HUD, will not require a reduction in project rents.*

PART IV. DISTRIBUTION OF FUNDS.

§ 4.1. Distribution of funds ; *generally* .

Funds will be distributed annually through a competitive process. Any funds remaining after the competition will be made available on a competitive basis among those projects which have corrected application deficiencies and are judged ready for underwriting. *The department may establish one or more application rounds per year and determine the distribution of available funds between the rounds. Pools and subpools may be established for each round which divide available funds and project applications according to geographic area, type of project, and/or other characteristics as the department believes meets the goals of the program.*

A- § 4.2. Maximum funding for project sponsor.

There will be a limitation of \$1 million per project in any single funding cycle. Funds will only be available for lower-income housing units. *Furthermore, the partnership will not fund more than 75% of the total development cost. Energy grant funds will only be available for rehabilitation projects and will be limited to \$4,000 per low-income unit.*

~~Energy grant funds will only be available for rehabilitation projects and will be limited to 15% of the total improvement cost of low-income units. Any applicant may submit more than one project; Any applicant may submit more than one project; however, no single project sponsor or closely related sponsoring entities may receive funding which totals more than 20% of the available funds for this program in any fiscal year.~~

B. § 4.3. Fund set-aside for project sponsor.

1. A. Loan and Energy Grant funds will be made available initially on a competitive basis to eligible project sponsors in accordance with the selection/evaluation criteria established in § 7.1 of these guidelines.

2. B. Upon selection, a Loan or Energy Grant Set-Aside will be made to a project sponsor for up to six months. This will allow time to complete project development activities including finalizing other financing and assistance from other local, state or federal housing programs. Extensions may be granted by DHCD, if appropriate.

3. C. A project sponsor's Set-Aside will be divided into two portions: The unrestricted portion will be provided from the state's General Fund Appropriation and may be used for any eligible improvements, as defined in § 2.2. The eligible energy-related portion will be provided from the state's Oil Overcharge Expenditure Trust Fund and may be used only for eligible energy-related improvements, as defined by DHCD.

PART V. LOAN TERMS AND CONDITIONS.

§ 5.1. Loan terms and conditions.

A. § 5.1. Interest rate.

~~The average interest rate for loans funded from the General Fund Appropriation is 6.0%. Loans may be made at rates as low as 2.0%. Loans may be made at rates averaging 5.0%, but as low as 2.0% and as high as 8.0%, dependent upon the needs of the project. Final determination of the interest rate will be made by VHDA in the underwriting, depending upon the needs and characteristics of the project. Final determination of the interest rate will be made by the department upon receipt of the underwriting report from VHDA.~~

Eligible energy improvements which are funded from the Oil Overcharge Expenditure Funds will be provided as a grant.

The department reserves the right to charge a commitment fee, not to exceed 2.0% of the principal amount.

B. § 5.2. Term.

The maximum term for loans will be 15 years, *except for participation loans with VHDA which will be 30 years*. Longer amortization schedules, not to exceed 30 years, may be considered. All repayments are due in 15 years. Grants are subject to repayment if the project sponsor violates program requirements. Repayment must be made in full if such violation occurs within two years from the date the grant is closed. Beginning in the third year, this repayment obligation is reduced at the rate of 25% per year. Notwithstanding the above, as of July 1, 1998, any

remaining grant repayment obligations shall be forgiven.

C. § 5.3. Deferrals.

Deferrals of principal payments or of both principal and interest payments may be allowed for up to five years. The Commonwealth shall determine the feasibility of any payment deferral or amortization deferral for each project. The use of such options may require higher interest rates to be paid during the loan repayment period.

D. § 5.4. Instruments for loan security ; *general requirements; lien requirements* .

1. *General requirements*. A. The borrowers(s) must be the sole owner(s) of the property. A title opinion and title insurance will be required for all loans unless otherwise approved by the state. Hazard insurance is required in such terms and amounts as specified by the Commonwealth.

2. *Lien requirements*. B. A lien shall be recorded on every property for which a program loan is made. The lien shall be divided into the amount securing the General Fund portion of the loan and the amount securing Oil Overcharge funds. The General Fund portion shall remain in effect for the term of the loan. Starting the third year, the Oil Overcharge portion of the lien will be forgiven at a rate of 25% per year, provided program requirements continue to be met. In no event shall the Oil Overcharge lien extend beyond July 1, 1998.

The Commonwealth will accept a subordinate position only to an existing mortgage or where the primary financing is being provided from another source.

E. § 5.5. Loan underwriting criteria ; *loan-to-value ratio* .

A. Specific underwriting criteria which are applicable to these loans have been established by the Commonwealth. These will include an evaluation of the site, project design and amenities, the market for the project, the experience and financial capacity of sponsors and contractors, architectural and engineering studies, the value of the project, financial risks and other considerations. Each project will be evaluated to assess the potential cash flow available to pay debt service and operating expenses.

Loan-to-value ratio:

B. The loan-to-value ratio shall be based on the appraised value of the structure after completion. A loan-to-value ratio of up to 100% will be considered for loans/grants to nonprofit housing sponsors and up to 90% for other sponsors. The Commonwealth may permit the ratio to exceed 100% under special circumstances to be considered on a case-by-case basis. The loan/grant amount may not exceed 100% of cost, as determined by the fund.

F. § 5.6. Loan servicing.

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VHDA will close the loans, conduct construction inspections when applicable, disburse proceeds, service the loans and provide ongoing management oversight.

G. § 5.7. Sale or transfer restrictions.

Loans made under this program will be assumable as long as the property use, income requirements, rent requirements, housing conditions and other program requirements are maintained for the term of the loan. An annual review will be made to assure project compliance. Approval by the Commonwealth will be required for loans to be assumed.

H. § 5.8. Prepayment of loan.

Prepayment of loans under this program will be prohibited.

PART VI. DISPLACEMENT.

§ 6.1. Displacement.

Projects which result in no or minimal displacement are encouraged. Where displacement is unavoidable, a sponsor's willingness and ability to assist current tenants in finding alternative housing both temporarily during rehabilitation and permanently will be considered in the selection of projects. A project which causes no displacement will be given higher ranking. Other projects will be required to include a description of the assistance (including counseling and financial reimbursement) to be given to displaced persons. Projects providing a greater level of assistance will be given a higher ranking score.

PART VII. EVALUATION CRITERIA.

§ 7.1. Evaluation criteria.

Project sponsors are selected to receive program funding through a competitive funding cycle. Criteria for evaluating and ranking projects are described below:

1. Public purpose. Projects which serve the lowest income groups (see § 3.1) will receive higher ranking priorities. Projects which serve a higher proportion of lower income households than the minimum required shall be given a higher score. Projects which charge less than the maximum allowable rents will be given a higher score. ~~Sponsors will be required to explain how their project serves public purpose. Points will also be awarded for such categories as amenities and unit size, energy efficiency, historic certification, local need, local government financial support, displacement plan, and leasing preferences.~~

2. Project feasibility. Projects will be evaluated based upon the appropriateness of the project to the population to be served, achievable time frame for

accomplishments, realistic project budget, and reasonable operating budget.

3. Project readiness. Projects will be evaluated on the strength of site control, zoning ~~and displacement issues~~, completeness of plans and specifications, ~~and commitment of financial sources to meet project costs.~~ ~~utilities, project time schedule, local support, and administrative capacity.~~

4. Leveraging /efficiency . Projects will be evaluated based on a comparison of the Multifamily Loan Program request to the total development cost for the project. *Those projects requesting the lowest relative amount will receive the most points. Projects showing the lowest cost per unit will also qualify for more points. Scoring will also include loan request per unit and per bedroom.*

5. Administrative experience. Projects will be evaluated based upon the qualification and experience of the development team, the contractor, and property management agent.

The department may establish application parameters which specify limits on allowable costs and other assumptions with which projects must comply at the time of application. DHCD may also establish scoring thresholds in total and per individual scoring section, and projects must equal or exceed such thresholds in order to qualify for funding. The department, at its sole discretion, may reduce the scoring thresholds in order to fully reserve available resources.

PART VIII. HOME INVESTMENT PARTNERSHIPS ACT.

§ 8.1. Distribution of funds; maximum funding for project sponsor.

A. *The Commonwealth is a participating jurisdiction for the allocation of HOME funds as defined by Title II of the National Affordable Housing Act of 1990. A portion of the funds available under this program may be allocated to multifamily projects which meet the eligibility requirements.*

B. *No single sponsor, or closely related entities, may qualify for a single reservation of funds or combined reservations from multiple projects in excess of 40% of the HOME funds available to multifamily projects. Those projects receiving HOME funds from a local participating jurisdiction are not eligible to apply for HOME funds administered by the state.*

§ 8.2. Occupancy requirements.

A minimum of 20% of the HOME assisted rental units must be reserved for households with incomes at 50% or less of the area median income as established by HUD. The remaining units must be reserved for households with

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incomes at 60% or less of the area median income.

§ 8.3. Rent requirements.

At least 20% of the HOME assisted units must have rents not greater than 30% of the gross income (minus tenant paid utilities) of a family whose income equals 50% of the area median income. Remaining HOME assisted units must have rents at or below the lesser of: (i) the existing Section 8 Fair Market Rent, or (ii) 30% of the gross income of a family whose income equals 65% of the area median income.

§ 8.4. Loan terms and conditions; interest rate; term.

A. HOME loans will be available at a cost of 3.0% interest-only on the outstanding principal throughout the loan term and any extended compliance period elected by the sponsor.

B. HOME loans for new construction projects will be for a term of 20 years. Rehabilitation projects will have HOME loan terms of 15 years. Principal repayment will be deferred throughout the loan term. If the sponsor elects extended compliance, the loan principal will be forgiven on a pro rata basis over the extended term.

§ 8.5. Other requirements.

All HOME loan recipients must comply with all applicable federal requirements including, but not limited to, Davis-Bacon Act, equal employment and fair housing, affirmative marketing, environmental review, displacement and relocation, contractor debarment and suspension, minority business enterprises and women's business enterprises, § 3 of the Housing and Urban Development Act of 1968, lead-based paint, and conflict of interest.

VA.R. Doc. No. R94-705; Filed March 16, 1994, 10:29 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

EDITOR'S NOTICE: The Department of Medical Assistance Services is soliciting additional public comment on clarifying language proposed in § 3 B of the following regulation. The proposed regulation was originally published in 10:7 VA.R. 1746-1751 December 27, 1993.

Title of Regulation: State Plan for Medical Assistance Relating to Home Health Reimbursement.
VR 460-03-4.1923. Establishment of Rate Per Visit.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through May 4, 1994.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The director approved, on December 7, 1993, the initiation of an initial public comment period for the proposed regulations. Section 9-6.14:7.1 of the Code of Virginia requires agencies to adopt and amend regulations subject to public notice and comment when the action being taken does not meet one of the statutory exemptions. Section 9-6.14:7.1(J) of the Code of Virginia requires agencies to conduct an additional comment period if 25 individuals request the opportunity to comment on changes which appear in final regulations which were not in the proposed regulations. Even though no requests to submit comments have been received and DMAS has determined that the clarifying language is not substantive, it is seeking an additional comment period of 30 days to ensure adequate opportunity for public review.

Purpose: This action permits additional public comment on clarifying language the agency determines is necessary in the permanent regulations. Permanent regulations are required to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

Summary and Analysis: The section of the State Plan for Medical Assistance affected by this action is Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates – Other Types of Care, Establishment of Rate Per Visit.

The 1993 General Assembly (GA), in the Appropriations Act (Item 313.P), directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The GA also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission (JLARC) recommended that a revision be made to the existing statistical methodology.

Before adoption of the emergency regulations, the agency's policy, effective July 1, 1991, changed the reimbursement methodology for home health services from cost reimbursed to fee based. It reimbursed home health agencies (HHAs) at a flat rate per visit for each type of service rendered and for each level of service for each of three peer groups (urban, rural and Northern Virginia). It further divided the three peer groups into freestanding

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and hospital-based HHAs and established the Department of Health's agencies as a separate peer group.

By virtue of the 1993 GA mandate, the peer groups no longer distinguished between freestanding and hospital-based HHAs and there no longer were urban and rural peer groups. The basis for establishing rates became the weighted median cost per service from the 1989 cost-settled Medicaid cost reports filed by freestanding HHAs. Based on certain JLARC recommendations, the agency modified its statistical approach by eliminating the adjustment to remove outliers before determining the peer group medians. The General Assembly action did not impact the separate peer group established for the Department of Health agencies.

After the close of the comment period on the proposed regulations, DMAS determined that clarifying language was needed to indicate clearly that Department of Health home health agencies' rates will continue to be determined by using data from its own cost report. Without the clarifying sentence at § 3 B, it might be interpreted that these agencies, which occupy their own unique peer group, were to use data from proprietary freestanding agencies' cost reports.

Issues: The primary issue with home health agency reimbursement, in switching from a cost-based methodology to a fee-for-service methodology, was to develop a methodology which would appropriately and adequately reimburse for costs incurred by both freestanding agencies and agencies financially attached to acute and long-term care institutions.

DMAS has a total of 195 home health agency providers which includes 31 health department agencies and 164 private home health agencies. The group of private agencies includes freestanding and those affiliated with hospitals and nursing facilities. The private home health agencies' reimbursement is affected by this regulation which eliminates the urban/rural distinction; uses the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; reimburses both hospital-based and freestanding agencies at the same rate; and eliminates the adjustment to remove outliers.

Summary of Public Comments Received: DMAS' originally proposed regulations were published in the December 27, 1993, Virginia Register for their public comment period from December 28, 1993, to February 25, 1994. No comments were received. Review by the Department of Planning and Budget indicates no objections to the changes. Since the agency has determined that further clarifying changes are needed over those which were originally proposed, it is seeking an additional 30-day period of public comment.

Impact: Chapter 994 of the Acts of the Assembly item 313.P directed the department to take this action. DMAS funding has already been reduced by \$500,000 GF for this

program change. DMAS' calculation shows that, under the pre-July 1, 1993, HHA reimbursement methodology, it would pay an estimated \$5.0 million in general funds for fiscal year 1994. This amount is estimated to be reduced to \$4.5 million in general funds by (i) eliminating the distinction between urban and rural peer groups; (ii) utilizing the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; (iii) reimbursing hospital-based home health agencies at the rate set for freestanding home health agencies; and (iv) eliminating the adjustment to remove outliers. Therefore, the department estimates that this amendment will result in a reduction in budgeted general funds of approximately \$500,000 for fiscal year 1994, the reduction is reflected in the FY 94 appropriation. The impact on urban, rural and hospital-based home health agencies will be the reduction of their payments by \$500,000 GF.

There are no additional costs of complying with this regulation for any home health agency providers. The agencies enrolled with Medicaid to provide services to recipients already incur operating costs which this regulation will not affect. Additionally, DMAS will not incur any additional operating costs to implement this regulatory change.

Summary:

This action permits additional public comment on clarifying language the agency determines is necessary in the permanent regulations. Permanent regulations are required to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The section of the State Plan for Medical Assistance affected by this action is Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates - Other Types of Care, Establishment of Rate Per Visit.

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Before adoption of the emergency regulations, the

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agency's policy, effective July 1, 1991, changed the reimbursement methodology for home health services from cost reimbursed to fee based. It reimbursed home health agencies (HHAs) at a flat rate per visit for each type of service rendered and for each level of service for each of three peer groups (urban, rural and Northern Virginia). It further divided the three peer groups into freestanding and hospital-based HHAs and established the Department of Health's agencies as a separate peer group.

By virtue of the 1993 GA mandate, the peer groups no longer distinguished between freestanding and hospital-based HHAs and there no longer were urban and rural peer groups. The basis for establishing rates became the weighted median cost per service from the 1989 cost-settled Medicaid cost reports filed by freestanding HHAs. Based on certain JLARC recommendations, the agency modified its statistical approach by eliminating the adjustment to remove outliers before determining the peer group medians. The General Assembly action did not impact the separate peer group established for the Department of Health agencies.

After the close of the comment period on the proposed regulations, DMAS determined that clarifying language was needed to indicate clearly that Department of Health home health agencies' rates will continue to be determined by using data from its own cost report. Without the clarifying sentence at § 3 B, it might be interpreted that these agencies, which occupy their own unique peer group, were to use data from proprietary freestanding agencies' cost reports.

VR 460-03-4.1923. Establishment of Rate Per Visit.

§ 1. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

§ 2. Effective for dates of services on and after July 1, 1993, DMAS shall establish a flat rate for each level of service for HHAs located in three by peer groups group. These peer groups shall be determined by the geographic location of the HHA's operating office and shall be classified as: URBAN, RURAL, or NORTHERN VIRGINIA. There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia. The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) shall be

incorporated in determining the appropriate peer group for these classifications.

§ 3. A separate grouping shall be established within each of the three peer groups to distinguish between freestanding and hospital-based HHAs. This shall account for the higher costs of hospital-based agencies resulting from Medicare cost allocation requirements. The Department of Health's agencies shall be established are being placed in another a separate peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

§ 3. Rates shall be calculated as follows:

1. A. Each home health agency shall be placed in its appropriate peer group.

2. B. Home health agencies' Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from its 1989 cost-settled Medicaid cost report. Non-Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports filed by freestanding HHAs. Costs shall be inflated to a common point in time (June 30, 1991) by using the percent percentage of change in the moving average factor of the Data Resources, Inc. (DRI), National Forecast Tables for the Home Health Agency Market Basket.

3. C. To determine the flat rate per visit effective July 1, 1991, the following methodology shall be utilized.

a. Each HHA's per visit rate shall be normalized for those peer groups that have different wage indexes as determined by Medicare for the MSAs in Virginia.

b. The normalized HHA peer group rates and visits shall be adjusted to remove any HHA per visit rates that are outside of plus or minus one standard deviation from the peer group mean to eliminate any data that might distort the median rate per visit determination.

e. 1. The peer group HHA's per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.

d. The HHA's rate effective July 1, 1991, shall be the lower of the peer group median or the Medicare upper limit per visit for each discipline.

2. The HHA's peer group median rate per visit for each peer group at July 1, 1991, shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1992, and shall become

Proposed Regulations

the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993, through December 1993.

e. 3. Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be \$15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.

4. D. The fee schedule shall be adjusted annually on or about January 1, based on the percent *percentage* of change in the moving average of Data Resources, Inc., National Forecast Tables for the Home Health Agency Market Basket determined in the third quarter of the previous calendar year. The method to calculate the annual update shall be:

a. The HHA's peer group rate effective July 1, 1991, shall become the final peer group rate for the first partial year ending December 31, 1991, and shall be the interim peer group rate for calculating the update January 1, 1992. For all HHA peer groups the interim peer group rate shall be updated for 100% of historical inflation from July 1, 1991, through December 31, 1991, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group rate. The lower of the final peer group rates or the Medicare upper limit at January 1, 1992, will be effective for payments from January 1, 1992, through December 31, 1992.

There will be a one time adjustment made for those HHA final peer group rates that were established at July 1, 1991, based on the Medicare upper limits. The peer group median and the Medicare upper limit at July 1, 1991, shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1991. The final interim peer group rate shall be the lower of the two which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group. For these peer groups the lower of the final peer group rate or the Medicare upper limit at January 1, 1992, will be effective from July 1, 1992, through December 31, 1992.

b. 1. All subsequent year peer group rates shall be

calculated utilizing ~~this same method~~ with the previous final interim peer group rate established on January 1 becoming the interim peer group rate at December 31 each year. The interim peer group rate shall be updated for 100% of historical inflation for the previous twelve months, January 1 through December 31, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation for the subsequent 12 months, January 1 through December 31.

e. 2. The annual update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the HHA's shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

VA.R. Doc. No. R94-724; Filed March 16, 1994, 11:42 a.m.

Proposed Regulations

SECTION I: TRANSACTION TYPE		VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES PRE AUTHORIZATION REQUEST		Please mail request to: ATTN: (Enter from Section V) Dept. of Medical Assistance Services 600 East Broad Street, Suite 1300 Richmond, Virginia 23210									
<input type="checkbox"/> Original	<input type="checkbox"/> Change	Tracking Number:	Date Received:										
<input type="checkbox"/> Delete													
SECTION II: PROVIDER INFORMATION			SECTION V: PROGRAM CATEGORY										
Provider Name:	93 DEPT. HEALTH		Check ONE Appropriate Category (Mail to Attention of):										
Address:	City:	State:	Zip:	CBC PROGRAM: HOME HEALTH:									
Street:				<input type="checkbox"/> EPSDT (1)	<input type="checkbox"/> Home Health (8)								
Contact Person:	Telephone:			<input type="checkbox"/> Waiver (2)	<input type="checkbox"/> DME (7)								
				<input type="checkbox"/> Outpatient Psych (3)									
SECTION III: RECIPIENT INFORMATION			MED. SUPPORT: REHAB UNIT:										
Recipient No.:	Recipient Name:			<input type="checkbox"/> Medical Services (4)	<input type="checkbox"/> Rehab (9)								
Address:	(Last)	(First)		<input type="checkbox"/> Other Services (5)									
Street:	City:	State:	Zip:										
Telephone:	Recipient's Birth Date:												
Other Insurance:	Medicare Number:												
SECTION IV: REFERRAL SOURCE INFORMATION			SECTION VI: SERVICE CATEGORY										
Referral Name:	Provider No.:			Check One Appropriate Category:									
Address:				<input type="checkbox"/> DME (1)	<input type="checkbox"/> Inpt. Psych (4)								
Street:	City:	State:	Zip:	<input type="checkbox"/> Practitioners (2)	<input type="checkbox"/> Outpt. Psych (5)								
Contact Person:	Telephone:			<input type="checkbox"/> Pharmacy (3)	<input type="checkbox"/> Other (6)								
				<input type="checkbox"/> Home Hlth. (7)	<input type="checkbox"/> Rehab (8)								
				<input type="checkbox"/> Hospital (9)									
SECTION VII: REQUEST INFORMATION													
HCPCS / CPT Code / NDC / Revenue Code	HPCS Modifier	Units Requested	Actual Cost per Unit	Total Dollar Requested	Date of Service From Thru	ACTION STATUS	Approved Date	Approved Units	Approved Dollars/Units	From	Thru	Action Reason	Initial and Date
(1)						A							
(2)						D							
(3)						P							
(4)						A							
(5)						D							
(6)						P							
Provider Comments						Comments							
Provider Signature						Date							

DMAS 351 7/92

ATTACH DOCUMENTATION OF MEDICAL NECESSITY

INSTRUCTION FORM - PREAUTHORIZATION REQUEST

SECTION I: Transaction Type

Check appropriate Transaction:
Original - use for new requests
Change - use for adjustment of original request
Delete - use for void of original request

(Original tracking number must appear on all requests for changes and/or deletions)

SECTION II: Provider Information (Provider who will deliver and bill for requested service)

Provider Name: Complete Address of Provider

Provider No.: Complete Provider Number (7 DIGITS)

Complete Address of Provider
Identify locality that service is being provided from; (All correspondence will be sent to the address identified on your provider agreement)

Contact Person: Identify the contact person for DMAS to call if the reviewer has questions

Telephone No.: Identify the telephone number of the contact person (Including Area Code)

SECTION III: Recipient Information

Recipient No.: Complete Medicaid Number (12 DIGITS)
It is your responsibility to verify Recipient Medicaid eligibility before submitting request or providing items

Recipient: Recipient's Full Name (Last & First Name)

Address: Complete Address of Recipient (use current address of Medicaid Recipient; include box#, street address, city, state and zip code)

Telephone No.: Complete Telephone Number of Recipient (Including area code)

Date of Birth: Full Date of Birth (MONTH, DAY, YEAR)

Medicare No.: Complete Medicare Number (10 DIGITS)

Other Insurance: Identify any other insurance that the recipient has (include the name of the insurance carrier and the policy number if available)

SECTION IV: Referral Source Information (If the Provider making a referral for the requested services is not the same Provider who will deliver the service, this section should be completed)

Provider Name: Full Name of Provider

Provider No.: Complete Provider Number (7 DIGITS)

Address: Complete Address of Provider (Use the current address of the referral source; include box number, street address, city and zip code)

Contact Person: Identify the contact person for DMAS to call if the reviewer has questions

Telephone No.: Identify the telephone number of the contact person (Including Area Code)

SECTION V: Program Category

Check the appropriate program from which recipient is eligible to receive requested service (Select only 1 program per request)

SECTION VI: Service Category

Check the appropriate category for which request refers to (Select only 1 service category per request)

SECTION VII: Request Information

Procedure Code: Procedure code (Revenue, HCPCS, or NDC Code) which identifies the specific service being requested, must be completed for request to be considered

If specific code is not established, please provide a complete narrative description of service being requested in the Provider Common Section

Procedure Modifier: Use appropriate Procedure Modifier; refer to Billing Chapter of the Provider Manual

Units Requested: Identify Units requested using the established Billing Units; If authorization is needed because more than the established allowable is needed, Only list the amount in excess of the allowable

Actual Cost: Must be completed when requesting service item that requires DMAS consideration for pricing (Request must include a Description, Manufacture name, Catalog number and copy of Purchase Invoice)

Total Dollar Requested: Identify Total Dollars requested based on corresponding Procedure Codes and Units Requested

Dates of Service: Identify Dates of Service for which the corresponding Procedure Codes and Units are Requested

Signature of Provider and Date of Request must appear in Section VII
ATTACH DOCUMENTATION OF MEDICAL NECESSITY; IF A HOME HEALTH PARTICIPANT, THE HOME HEALTH PLAN OF CARE MUST BE ATTACHED

SECTION VIII: DMAS USE ONLY - DO NOT WRITE IN THIS SECTION

MAIL TO: ATTENTION _____ UNIT
DMAS - 600 EAST BROAD STREET, SUITE 1300
RICHMOND, VA - 23219

Proposed Regulations

Health Care Financing Administration OMB No. 0938-0357

MEDICAL UPDATE AND PATIENT INFORMATION

1. Patient's HI Claim No. 2. SOC Date 3. Certification Period 4. Medical Record No. 5. Provider No.

6. Patient's Name 7. Provider's Name

8. Medicare Covered: Y N M J S Date Physician Last Saw Patient: 10/7 Date Last Contacted Physician: Modified

11. Is the Patient Receiving Care in an 1861 (R/F) Skilled Nursing Facility Confined Recertification Modified

13. Specific Services and Treatments

Discipline (This Bill) Rel. to Prior Cert.	Frequency and Duration	Treatment Codes	Total Visits Projected This Cert.

14. Date of Last Inpatient Stay: Admission Discharge 15. Type of Facility:

16. Updated Information: New Orders/Treatments/Clinical Facts/Summary from Each Discipline

17. Functional Limitations (Expanded From 485 and Level of ADL) Reason Homebound/Prior Functional Status Y N

18. Supplementary Plan of Treatment on File from Physician Other than Referring Physician: (If Yes, Please Specify Giving Goals/Rehab. Potential/Discharge Plan) Y N

19. Unusual Home/Social Environment

20. Inpatient Any Time When the Home Health Agency Made a Visit and Patient Was Not Home and Reason Why if Applicable 21. Specify Any Known Medical and/or Therapeutic Reasons the Patient Regularly Leaves Home and Frequency of Occurrence

22. Nurse or Therapist Completing or Reviewing Form Date (Mo., Day, Yr)

Health Care Financing Administration OMB No. 0938-0357

HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT

1. Patient's HI Claim No. 2. SOC Date 3. Certification Period 4. Medical Record No. 5. Provider No.

6. Patient's Name and Address 7. Provider's Name and Address

8. Date of Birth: 9. Sex M F Date

11. ICD-9-CM Principal Diagnosis

12. ICD-9-CM Surgical Procedure

13. ICD-9-CM Other Payment Diagnosis

14. DME and Supplies

15. Safety Measures:

16. Nutritional Req.

17. Allergies:

18. Activities Permitted

19. Mental Status: 1 Oriented 2 Confused 3 Delirious 4 Disoriented 5 Incontinent 6 Lethargic 7 Other 8 Fair 9 Good 10 Excellent

20. Prognosis: 1 Poor 2 Guarded 3 Fair 4 Good 5 Excellent

21. Orders for Discipline and Treatment's (Specify Amount/Frequency/Duration)

22. Goals/Rehabilitation Potential/Discharge Plans

23. Verbal Plan of Care and Nurse's Signature and Date Where Applicable:

24. Physician's Name and Address

25. Date HHA Received Signed POC

26. I certify recently that the above home health visits are required and are supervised by me with verification. This patient is under my care, is continuing to his home, and is in need of intermittent skilled nursing care under physical or speech therapy or has been furnished home health services based on such a need and no longer has a need for such care or therapy. It continues to need occupational therapy.

27. Attending Physician's Signature (Required on 485 Kept on File in Medical Records of HHA) Date Signed

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-01-01. Guidelines for Public Participation (REPEALED).

Title of Regulation: VR 115-01-01:1. Public Participation Guidelines.

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

Effective Date: June 11, 1994.

Summary:

Public Participation Guidelines are regulations, mandated by § 9-6.14:7.1 of the Code of Virginia, that govern how the agency will involve the public in the making of regulations. The regulations promulgated in 1984 (VR 115-01-01) are being repealed and replaced by these public participation guidelines.

The regulatory action was for the purpose of reviewing for effectiveness and continued need VR 115-01-01, Guidelines for Public Participation. The finally-adopted regulation will supersede an emergency regulation that will be in effect only through June 10, 1994.

The regulation governs regulation-making entities under the aegis of the Department of Agriculture and Consumer Services (with the exception of the Pesticide Control Board, which has adopted its own public participation guidelines), and the Virginia Agricultural Development Authority.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from L.H. Redford, Department of Agriculture and Consumer Services, 1100 Bank Street, P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-3539. There may be a charge for copies.

VR 115-01-01:1. Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in these

regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Advisor" means any of the following: (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; and (v) any combination thereof.

"Agency" means any of the following in the exercise of its duly authorized regulation-making authority: (i) entities under the jurisdiction of the department that have the authority to make regulations, including the Board of Agriculture and Consumer Services, the commissioner, all divisions of the department (including the state veterinarian), offices, boards (excluding the Pesticide Control Board, but only to the extent that any regulation of the Pesticide Control Board is developed exclusively under VR 115-04-21, Public Participation Guidelines, Pesticide Control Board, or any successor regulation), and commissions under the jurisdiction of the department; and (ii) the Virginia Agricultural Development Authority.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia.

§ 2. Applicability.

A. These Public Participation Guidelines apply to (i) the development of any proposed regulation; (ii) the development of any proposed amendment to an existing regulation; and (iii) the repeal of an existing regulation, governed by Article 2 of the Administrative Process Act.

B. These Public Participation Guidelines shall apply only to regulatory actions for which a notice of intended regulatory action is filed (irrespective of the date of adoption of the notice of intended regulatory action) on or after the effective date of these Public Participation Guidelines.

C. Any agency governed by these Public Participation Guidelines [~~may solicit, according to the terms of these Public Participation Guidelines, comment on matters governed by subsection A of this section from interested persons, and will shall~~] afford interested persons the opportunity to submit data, views, and arguments, either orally or in writing, to the agency or to the agency's specially designated subordinate. Nothing in this subsection

shall be deemed to prohibit any agency governed by these Public Participation Guidelines from taking steps to involve the public that are [~~different than or~~] in addition to those contained in these Public Participation Guidelines [including, but not limited to, only partial fulfillment of any subdivision of § 4 A, so long as any other subdivision of § 4 A is fully complied with in any regulation making] .

§ 3. Identification of interested persons and advisors [; notice of intended regulatory action] .

A. [(i) ~~The~~ When the agency intends to comply with § 4 A 1, the] agency [~~may identify in identifying~~] persons [~~that may be who are~~] interested in [~~proposed~~] regulation making [; The agency, in identifying persons interested in proposed regulation making pursuant to § 4 A 1 (i) shall consult] , and [(ii)] the commissioner in identifying potential advisors (pursuant to § 6 of these Public Participation Guidelines) [~~may shall~~] consult [~~the following~~] :

1. A directory of agricultural organizations printed by the department;
2. Available individual industry mailing lists;
3. A listing of persons who request to be placed on a mailing list maintained by the agency; and
4. A listing prepared by the department's operating divisions of persons who would have a potential interest in participating in the formation of regulations within the divisions' responsibility.

B. Nothing in this [~~section~~ regulation] shall be deemed to require the agency or the commissioner to use any entry contained in the lists named in subsection A of this section.

[C. The agency may furnish the notice of intended regulatory action, specified in § 6 B, to any person that the agency identifies as being interested in a potential regulation.]

§ 4. Proposed regulation.

[A.] The agency [~~may shall~~] comply with at least one of the following subdivisions, and may comply with more than one] :

1. Offer persons the opportunity to make oral and written comments on the proposed regulation;
2. Furnish a copy of the proposed regulation to all persons who respond to the notice of intended regulatory action;]

[~~2~~ 1.] Furnish a copy of the proposed regulation to [: (i)] persons that the agency identifies as being interested in the proposed regulation [, and (ii) all

persons who respond to the notice of intended regulatory action] ;

[4. 2.] Prepare a news release and distribute it to [~~at~~] daily and weekly newspapers, radio and television stations, [~~and~~ or] news wire services serving Virginia concerning the proposed regulation [that the agency selects to publicize the news release. In making its selection, the agency shall consider the subject matter of the regulation under development] . The news release [~~may shall~~] include information about:

- a. The subject matter and purpose of the proposed regulation;
- b. The deadline for submitting comments on the proposed regulation;
- c. The responsible contact person within the agency to whom comments should be addressed;
- d. A procedure for obtaining copies of the proposed regulation; and
- e. The times, dates, and places of the public hearings; [or]

[~~5~~ 3.] Make available for public inspection a copy of each proposed regulation at the following offices of the department:

- a. Abingdon;
- b. Franklin;
- c. Harrisonburg;
- d. Ivor;
- e. Lynchburg;
- f. Onley;
- g. Roanoke;
- h. Suffolk;
- i. Warrenton; and
- j. Wytheville [; .]

[6. Hold a public hearing or public hearings on every proposed regulation governed by these Public Participation Guidelines; and]

[B. The agency shall hold a public hearing on a regulation under development when the law requires a public hearing to be held. In addition, the agency may hold a public hearing or public hearings on a regulation under development in any instance, including but not limited to instances in which the agency believes that a

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public hearing will provide information useful or necessary not apt to be provided to the agency in the absence of a public hearing.]

[~~7. Hold~~ C. Nothing in this regulation shall be deemed to prohibit the agency from holding] the record open to provide an additional time period for receiving written comments on the proposed regulation.

[D. Nothing in this regulation specifying that the agency furnish, distribute, provide, or otherwise make available a document, including but not limited to a proposed regulation, shall be deemed to guarantee delivery or receipt. For purposes of this regulation, any document that has been sent by U.S. mail or by any other delivery service, or that has been delivered by hand by a representative of the agency or by any other means, shall be deemed to have been furnished, distributed, provided, or otherwise made available.]

§ 5. Final regulation.

After a regulation has been adopted pursuant to the 30-day final adoption process, the agency may issue a news release about the regulation.

§ 6. General policy for the use of advisors; notice of intended regulatory action.

A. This section sets out the general policy of the agency in the use of advisors. This general policy addresses the circumstances in which the agency considers advisors appropriate and the circumstances under which the agency intends to make use of advisors.

B. Any agency governed by these Public Participation Guidelines shall include in any notice of intended regulatory action filed with the Registrar of Regulations: (i) any provision required by statute relating to the notice of intended regulatory action; and (ii) a statement inviting comment on whether there should be an advisor.

C. The agency considers an advisor appropriate and intends to make use of an advisor when:

1. The agency receives in writing from at least 25 persons during the pendency of the notice of intended regulatory action declarations of interest in having an advisor appointed with respect to the regulation under development; and

2. The subject matter of the notice of intended regulatory action has not previously been the subject of regulation making by the agency.

D. The agency hereby delegates to the commissioner the authority to appoint advisors. The provision of subsection C of this section notwithstanding, the commissioner may, at his own motion or when the agency deems it appropriate, appoint an advisor.

E. It is in the commissioner's sole discretion to determine:

1. Who the advisor, if any, shall be; and

2. Whether the advisor, if any, shall be: (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination of subdivisions (i) through (iv) of this subdivision.

[§ 7. Delegation.

Except as otherwise provided herein, the authority to implement the provisions of this regulation is hereby granted to the commissioner and employees of the Department of Agriculture and Consumer Services, subject to the ultimate authority of the Board of Agriculture and Consumer Services and any other agency that is subject to this regulation.]

V.A.R. Doc. Nos. R94-694 and R94-695; Filed March 14, 1994, 2:10 p.m.

Pesticide Control Board

Title of Regulation: VR 115-04-21. Public Participation Guidelines of the Pesticide Control Board Guidelines .

Statutory Authority: §§ 3.1-249.30 and 9-6.14:7.1 of the Code of Virginia.

Effective Date: ^{June} July 22, 1994.

Summary:

The Pesticide Control Board has amended VR 115-04-21, Public Participation Guidelines, to provide more opportunity to the public to petition the board regarding regulatory matters. Emergency public participation guidelines became effective June 21, 1993, to ensure full compliance with the amendments to the Administrative Process Act effective July 1, 1993.

The board reviewed its public participation guidelines for effectiveness and continued need and to encourage the public to indicate its desire to have an advisor appointed to participate in the promulgation of regulations. An "advisor" is clearly defined and to expedite the process, the board delegated appointment of the advisor to the board chairman with ratification by the board.

Additionally, the amended regulations require the board to receive, consider and respond to the public's request for amendment to the public participation guidelines.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

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Agency Contact: Copies of the regulation may be obtained from L.H. Redford, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3539. There may be a charge for copies.

VR 115-04-21. Public Participation Guidelines.

§ 1. Definitions.

All terms defined in the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia) are hereby incorporated by reference in this regulation. The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Advisor" means (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof.

"Chairman" means the Chairman of the Virginia Pesticide Control Board.

§ 1. 2. Purpose.

These public participation guidelines set out methods for the identification and notification of parties, persons, and groups interested in the development of regulations of the Pesticide Control Board (hereinafter "board"). The board and the staff of the ~~Department of Agriculture and Consumer Services~~ Office of Pesticide Management shall observe the requirements the present guidelines contain during the formation, drafting, promulgation, and final adoption of any and all regulations of the Pesticide Control Board:

1. Except as provided in § 11-12 or otherwise authorized by statute; and
2. Except for regulations for which Notice of Intended Regulatory Action has been filed with the Registrar of Regulations pursuant to Guidelines for Public Participation in Regulation Development and Promulgation of the Virginia Department of Agriculture and Consumer Services, if such Notice of Intended Regulatory Action was filed prior to the effective date of the present regulation.

§ 2. 3. Establishment and maintenance of mailing lists.

A. The staff of the ~~Division of Product and Industry Regulation~~ Pesticide Control Board shall establish and maintain mailing lists of those who are or may be interested in a regulation to be developed. In partial or complete fulfillment of this requirement, the staff may utilize mailing lists already maintained by the Department of Agriculture and Consumer Services.

B. The staff of the ~~Division of Product and Industry~~

~~Regulation~~ Pesticide Control Board may develop additional mailing lists by appropriate announcement in news releases and in agency publications of the development of mailing lists.

C. The staff of the ~~Division of Product and Industry Regulation~~ Pesticide Control Board shall include on its mailing lists individuals and groups who request to be on the lists.

§ 3. 4. Public meetings.

A. The board or any representative designated for such purpose by the board may hold a public meeting on any new regulation under consideration and may hold a public meeting relating to amendment of any existing regulation.

B. In notifying the public of any such meeting, the staff of the ~~Division of Product and Industry Regulation~~ Pesticide Control Board shall prepare and the Office of Policy Analysis and Development Office of Policy, Planning, and Agricultural Development shall review and file a "Notice of Meeting" (Form RR06) and a "Notice of Intended Regulatory Action" (Form RR01) with The Virginia Register of Regulations. The date set for the meeting in the notice shall be at least 30 days after the date of publication of the Notice of Meeting and the Notice of Intended Regulatory Action in The Virginia Register of Regulations.

C. The staff of the ~~Division of Product and Industry Regulation~~ Pesticide Control Board shall mail notice of the meeting and the Notice of Intended Regulatory Action to those on mailing lists corresponding to the subject of the regulation under consideration.

D. The staff of the ~~Division of Product and Industry Regulation~~ Pesticide Control Board may also through the Communication Office issue press releases on the upcoming public meeting and publish notice of the public meeting in agency publications.

§ 4. Advisory committee.

The board may appoint an advisory committee to make recommendations on the content of a regulation under consideration. The membership of the committee shall be formed so as to give a balanced representation of interested parties and views.

§ 5. General policy for the use of advisors.

A. This section sets out the general policy of the board for the use of advisors. This general policy addresses the circumstances in which the agency considers advisors appropriate and the circumstances under which the agency intends to make use of advisors.

B. In any notice of intended regulatory action filed by the board at or after the time these public participation guidelines take effect, the board shall include (i) any

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provision required by statute relating to the notice of intended regulatory action; and (ii) a statement inviting comment on whether there should be an advisor. The board considers an advisor appropriate and intends to make use of an advisor when:

1. The board receives in writing from at least 25 persons during the pendency of the notice of intended regulatory action declarations of interest in having an advisor appointed with respect to the regulation under development; and

2. The subject matter of the notice of intended regulatory action has not previously been the subject of regulation making by the board.

C. Despite the provisions of subsection B of this section, the chairman may in his sole discretion or at the board's direction appoint an advisor.

D. The board hereby delegates to the chairman the authority to appoint advisors and the appointments shall be ratified by the board. The decision shall rest exclusively with the chairman as to whether the advisor, if any, shall be: (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination of subdivisions (i) through (iv) of this subsection.

E. The amending provisions contained in this regulation shall apply only to regulatory actions for which a notice of intended regulatory action is filed (irrespective of the date of adoption of the notice of intended regulatory action) with the Registrar of Regulations at or after the time these public participation guidelines take effect.

§ 5. 6. Drafting the regulation.

In consultation with any advisory committee appointed, the staff of the ~~Division of Product and Industry Regulation Pesticide Control Board~~ shall draft the regulation. The staff shall consider each public comment and be prepared to respond in writing as to why a comment was or was not incorporated into the draft regulation.

§ 6. 7. Board review and endorsement of draft regulation.

The board shall meet and review the staff draft. If the draft is satisfactory to the board as a proposal, it shall so indicate by vote, and authorize its formal publication as a proposed regulation.

§ 7. 8. Proposed regulation.

A. The staff of the ~~Division of Product and Industry Regulation Pesticide Control Board~~ shall prepare required documents (including notice of opportunity for oral or written submittals, accomplished by "Notice of Comment Period" (Form RR02)) and submit them with the proposed regulation to through the ~~Office of Policy Analysis and~~

~~Development for review and~~ Office of Policy, Planning, and Agricultural Development for publication in The Virginia Register of Regulations. The register publication and the newspaper publication required by § 8 9 B shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals.

B. At the same time, the ~~Office of Policy Analysis and Development~~ Office of Policy, Planning and Agricultural Development shall also submit the proposed regulation along with required documents to the Office of the Governor and the Department of Planning and Budget for review.

§ 8. 9. Informational proceeding and notice thereof.

A. Informational proceeding.

The board may hold an informational proceeding pursuant to § 9-6.14:7.1 of the Code of Virginia on every regulation it proposes and on every proposed amendment to each regulation, notice for which shall comply with the provisions of this section of this regulation.

B. Notice of informational proceeding.

1. In addition to the required notice of opportunity for oral or written submittals published in the Virginia Register of Regulations pursuant to § 7 8 , and in a newspaper of general circulation published in the capital city, the staff of the ~~Division of Product and Industry Regulation Pesticide Control Board~~ shall, at the board's direction, publish notice of the board's proposed regulation and informational proceeding thereon in:

a. Other newspapers with substantial readership in Virginia, which notice shall meet the same requirements for notice to the public of the opportunity for oral or written submittals as the notice published in the newspaper of general circulation published at the capital city;

b. Press releases;

c. Mailings to those on its mailing lists; and

d. Other means as directed by the Commissioner or the board.

2. The staff of the ~~Division of Product and Industry Regulation Pesticide Control Board~~ is directed to mail a copy of the proposed regulation and notice of the informational proceeding thereon to everyone who has participated in public discussion of the regulation pursuant to the current regulation making.

§ 9. 10. Adoption of regulation.

The board may adopt the proposed regulation after the last day prescribed for submittals of public comment.

After the board has adopted the regulation, the staff of the ~~Division of Product and Industry Regulation Pesticide Control Board~~ shall prepare and submit through the ~~Office of Policy Analysis and Development~~ shall review and submit ~~Office of Policy, Planning, and Agricultural Development~~, a copy of the adopted regulation and the required documentation to The Virginia Register of Regulations, the Office of the Governor, and the Department of Planning and Budget.

§ 10. 11. Adoption of summary; of statement as to basis; and of description of public comment.

The summary; statement as to basis, purpose, substance, issues, and impact of the regulation; and the summary description of the nature of the oral and written data, views, and arguments presented during the public proceedings and the board's comments thereon required by § 9-6.14:9 D of the Code of Virginia, shall be made a part of the board's minutes and included as a part of the board's regulation file.

§ 11. 12. ~~Emergency regulations Application~~ .

The provisions of these public participation guidelines shall not apply to the making of regulations ~~which the Pesticide Control Board finds are necessitated by an emergency situation exempted under § 9-6.14:4.1 of the Code of Virginia~~ .

§ 13. Petitions.

Any person may petition the board to adopt or amend any regulation. Any petition received shall appear on the agenda of the next board meeting. The board shall consider and respond to the petition within 180 days. The board shall have the sole authority to dispose of the petition.

The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of these public participation guidelines.

V.A.R. Doc. No. R94-693; Filed March 15, 1994, 9:42 a.m.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN – Public Participation Procedures, Appendix E).

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1308 of the Code of Virginia.

Effective Date: May 16, 1994.

Summary:

The major provisions of the regulation are

summarized below and amend the current public participation procedures as follows:

1. Add definitions to clarify the various types of hearings, proceedings and meetings associated with the regulatory adoption process.

2. Require an expanded Notice of Intended Regulatory Action (NOIRA) to include: (i) a description of the subject matter of the planned regulation; (ii) a description of the intent of the planned regulation; and (iii) a statement of intent as to whether the agency will hold at least one public hearing on the proposed regulation after it is promulgated for public comment by publication in The Virginia Register of Regulations.

3. Require an expanded Notice of Public Comment (NOPC) to include a statement identifying any locality particularly affected by the proposal.

4. Set out the methods for the identification and notification of interested persons, and the means of seeking input from interested persons or groups which the agency intends to use in addition to the NOIRA.

5. Specify the general policy for the use of standing advisory committees, ad hoc advisory groups, or consultation with groups and individuals registering interest in working with the agency to assist in the formation of the proposed regulation.

6. Require the agency to send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final action on the regulation.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Cindy M. Berndt, Department of Environmental Quality, 625 East Main Street, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4378. There may be a charge for copies.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN – Public Participation Procedures, Appendix E).

§ 1. Definitions.

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

B. As used in this appendix, all terms not defined herein shall have the meaning given them in this section, unless

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otherwise required by context.

C. Terms defined.

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

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

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

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

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

§ 1. 2. General.

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

B. At the discretion of the board or the department, the procedures in § 2 of this appendix may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. B. The failure of any person to receive any notice or copies of any documents provided under these procedures

shall not affect the validity of any regulation otherwise adopted in accordance with this appendix .

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

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

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

§ 2. § 3. Public participation procedures.

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

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

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the board specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The department shall use the participatory approach to assist in the development of the proposal or use one of the

following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five persons during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

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

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

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

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

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

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

e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the notice of intended regulatory action development of any proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .

b. A statement of estimated impact:

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

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

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

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

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

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

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

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

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

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. ~~(In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. ~~In those cases in which the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.~~

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

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

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

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

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

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

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

M. Completion of the remaining steps in the adoption

process shall be carried out in accordance with the Administrative Process Act.

§ 3. § 4. Transition.

A. All regulatory actions for which a Notice of Intended Regulatory Action has been published in The Virginia Register of Regulations prior to January 1, 1993, [~~insert effective date of this appendix~~ May 16, 1994,] shall be processed in accordance with the public participation guidelines in effect prior to January 1, 1993 Appendix E as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or superseded by permanent regulations .

B. This appendix [~~when effective~~] shall supersede and repeal Appendix E as revised by the emergency amendments which became effective on June 29, 1993. All regulatory actions for which a Notice of Intended Regulatory Action has not been published in The Virginia Register of Regulations prior to January 1, 1993, [~~insert effective date of this appendix~~ May 16, 1994,] shall be processed in accordance with this appendix.

VA.R. Doc. No. R94-696; Filed March 15, 1994, 11:54 a.m.

BOARDS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

Title of Regulation: VR 270-01-003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

Statutory Authority: §§ 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24 of the Code of Virginia.

Effective Date: May 4, 1994.

Summary:

The regulation is designed to ensure that adequate care, treatment, and education are provided by children's residential facilities. The revisions amend and clarify the requirements governing intake and service planning in Parts I and V. The revisions are designed to increase emphasis on treatment and services, clarify the types of admissions, decrease emphasis on paperwork, increase opportunities for use of professional judgment by providers and regulators, increase providers' flexibility to address the components of intake and service planning, simplify the requirements, eliminate unnecessary and redundant requirements and eliminate dissonance between the Code of Virginia and the regulation.

The final regulation differs from the proposed

regulation. A number of sections were revised to improve clarity and ease of interpretation. Sections 2.11 through 2.13 were revised to conform to the repeal of § 2.1-703 of the Code of Virginia; revisions to these sections are in response to statutory change where no agency discretion is involved. Revisions were made to § 1.1 to assure the definitions of emergency, routine, and self-admissions are mutually exclusive. Revisions were made to §§ 2.35, 5.53, 5.59, 6.1, 6.27 and 6.28 to establish consistency with, and eliminate conflicts created by, the revisions to § 5.1 et seq. Substantive revisions were made to § 5.1 et seq. to: (i) address the procedural differences between court ordered and noncourt ordered admissions and discharges; (ii) incorporate discharge planning as an important element of service planning; (iii) simplify the requirements for transferring residents between facilities operated by the same sponsor; (iv) require facilities to determine whether a prospective resident's admission would pose a significant risk to staff; and (v) expand the requirements concerning discharge.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from John J. Allen, Jr., Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1964. There may be a charge for copies.

VR 270-01-003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

PART I. INTRODUCTION.

Article 1. 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:

"Adaptive behavior" means the effectiveness or degree with which individuals with diagnosed mental disabilities meet the standards of personal independence and social responsibility expected of their age and cultural group.

"Allegation" means an accusation that a facility is operating without a license or receiving public funds, or both, for services it is not certified to provide.

"Applicant" means the person, corporation, partnership, association or public agency which has applied for a license/certificate.

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"Approval" means the process of recognizing that a public facility or an out-of-state facility has complied with standards for licensure or certification. (In this document the words "license" or "licensure" will include approval of public and out-of-state facilities except when describing enforcement and other negative sanctions which are described separately for these facilities.)

"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substances (e.g. hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities except the performance of medical procedures by medical personnel.

"Case record" or *"record"* means written information assembled in one folder or binder relating to one individual. This information includes social and medical data, agreements, notations of ongoing information, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Certificate to operate" means documentation of licensure or permission granted by the Department of Education to operate a school for the handicapped that is conveyed on a single license/certificate.

"Certification" means the process of recognizing that a facility has complied with those standards required for it to receive funding from one of the four departments for the provision of residential program services to children. (Under the Code of Virginia, the Board of Youth and Family Services is given authority to "approve" certain public and private facilities for the placement of juveniles. Similarly, school boards are authorized to pay, under certain conditions, for special education and related services in nonsectarian private residential schools for the handicapped that are "approved" by the Board of Education. Therefore, in this context the word "approval" is synonymous with the word "certification" and will be termed certification for purposes of this process.)

"Chemical restraint" means the use of any pharmacological substance for the sole purpose of controlling a resident's behavior in the absence of a diagnosed medical or psychiatric condition. Chemical restraint does not include the appropriate use of medications as ordered by a licensed physician for treating medical or psychiatric conditions.

"Child" means any person legally defined as a child under state law. This term includes residents and other children coming in contact with the resident or facility (e.g., visitors).

"Child placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.

"Child with special needs" means a child in need of particular services because he is mentally retarded, developmentally disabled, mentally ill, emotionally disturbed, a substance abuser, in need of special educational services for the handicapped, or requires security services.

"Client" means a person receiving treatment or other services from a program, facility, institution or other entity regulated under these standards whether that person is referred to as a patient, resident, student, consumer, recipient, family member, relative, or other term.

"Complaint" means an accusation against a licensed/certified facility regarding an alleged violation of standards or law.

"Confinement" means staff directed temporary removal of a resident from contact with people through placing the resident alone in his bedroom or other normally furnished room(s). Confinement does not include timeout or seclusion.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item which conflicts with the program or safety and security of the facility or individual residents.

"Coordinator" means the person designated by the Coordinating Committee to provide coordination and monitoring of the interdepartmental licensure/certification process.

"Corporal punishment" means the inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort.

"Department of Youth and Family Services standards for youth facilities" means those additional standards which must be met in order for a facility to receive funding from the Department of Youth and Family Services for the provision of residential treatment services as a juvenile detention facility, a facility providing youth institutional services, a community group home or other residential facility serving children in the custody or subject to the jurisdiction of a juvenile court or of the Department of Youth and Family Services except that the Interdepartmental Standards will be the Department of Youth and Family Services Standards for Youth Facilities for residential facilities receiving public funds pursuant to §§ 16.1-286 or 66-14 of the Code of Virginia for the provision of residential care to children in the custody of or subject to the jurisdiction of a juvenile court or of the

Department of Youth and Family Services.

"Education standards" means those additional standards which shall be met in order for a facility to (i) receive a certificate to operate an educational program that constitutes a private school for the handicapped; or (ii) be approved to receive public funding for the provision of special education and related services to eligible children.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off of permanent staff or other situations which should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except [(i) admittance necessary to comply with the order of a court of competent jurisdiction and (ii) voluntary admittance self-admittance] to a temporary care facility.

"Excursion" means a recreational or educational activity during which residents leave the facility under the direct supervision of facility staff for an extended period of time. Excursions include camping trips, vacations, and other similar overnight activities.

"Group home" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 residents.

"Group residence" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves from 13 to 24 residents.

"Human research" means any medical or psychological investigation designed to develop or contribute to general knowledge and which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects, and which departs from the application of those established and accepted methods appropriate to meet the subjects' needs but does not include:

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from human subject in the course of standard medical practice;
2. Epidemiological investigations; or
3. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated.

"Independent living program" means a program that is specifically approved to provide the opportunity for the

residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individual behavior management plan" means the planned, individualized, and systematic use of specific treatment techniques implemented by, or under the supervision of, personnel who have been professionally trained in behavior management and implemented to increase an individual's appropriate behaviors and to modify an individual's inappropriate or problem behaviors and replace them with behaviors that are appropriate and socially acceptable.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of each resident. It specifies short and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Interdepartmental standards" means those standards for residential care which are common to all four departments and which shall be met by all subject residential facilities for children in order to qualify for licensure, certification or approval.

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. Intrusive aversive therapy does not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia, or psychiatric medications which are used for purposes other than intrusive aversive therapy.

"Legal guardian" means the natural or adoptive parent(s) or other person(s), agency, or institution who has legal custody of a child.

"Licensee" means the person, corporation, partnership, association or public agency to whom a license is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.

"Licensing/certification authority" means the department or state board that is responsible under the Code of Virginia for the licensure, certification, or approval of a particular residential facility for children.

"Licensure" means the process of granting legal permission to operate a residential facility for children and to deliver program services. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the

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handicapped. Therefore, in this context, the term "certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

"Live in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. Such space contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the children who reside in the unit. Depending upon its design, a building may contain only one living unit or several separate living units.

"Management of resident behavior" means use of various practices, implemented according to group and individual differences, which are designed to teach situationally appropriate behavior and to reduce or eliminate undesirable behavior. Such practices include, but are not limited to, individual behavioral contracting, point systems, rules of conduct, token economies, and individual behavior management plans.

"Mechanical restraint" means the use of devices to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, but does not include the appropriate use of those devices used to provide support for the achievement of functional body position or proper balance and those devices used for specific medical and surgical treatment or treatment for self-injurious behavior.

"Mental disabilities certification standards" means those standards in addition to the Interdepartmental Standards which shall be met in order for a facility to receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services for the provision of residential treatment services to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled or substance abusing residents.

"Mental disabilities licensure standards" means, for those facilities that do not receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services, those standards in addition to the Interdepartmental Standards which must be met in order for a facility to be licensed to provide care or treatment to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled or substance abusing residents.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent. Parent means either parent unless the facility 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 provides to the contrary. Parent also includes a surrogate parent appointed pursuant to provisions of the Department of Education's regulations governing special education programs for handicapped children and youth. An individual 18 years or older may have the authority to assert any rights under the Department of Education's regulations in his own name.

"Pat down" means a thorough external body search of a clothed resident.

"Physical restraint" means the restraint of a resident's body movements by means of physical contact by staff members. Physical restraint does not include physical prompts or guidance used with individuals with diagnosed mental disabilities in the education or training of adaptive behaviors (See definition of "adaptive behavior").

"Placement" means an activity by any person which provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home or to a residential facility for children.

"Premises" means the tract(s) of land on which any part of a residential facility for children is located and any buildings on such tract(s) of land.

"Professional child and family service worker" means an individual providing social services to a resident of a residential facility and his family. Such services are defined in Part V, Article 16.

"Program" means a combination of procedures or activities carried out in order to meet a specific goal or objective.

"Public funding" means funds paid by, on behalf of, or with the financial participation of the state Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; or Youth and Family Services.

"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis. Resident includes children making preplacement visits to the facility.

"Residential facility for children" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians; that is subject to licensure, certification or approval pursuant to the provisions of the Code of Virginia cited in the Legal Base; and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities and respite care facilities, except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1,

1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and

2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals."

"Respite care facility" means a facility that is specifically approved to provide short term, periodic residential care to children accepted into its program in order to give the legal guardians temporary relief from responsibility for their direct care.

"Responsible adult" means an adult, who may or may not be a staff member, who has been delegated authority to make decisions and to take actions necessary to assume responsibility for the safety and well-being of children assigned to his care. The term implies that the facility has reasonable grounds to believe that the responsible adult has sufficient knowledge, judgment and maturity commensurate to the demands of the situation for which he is assuming authority and responsibility.

"Rest day" means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Two successive rest days shall consist of a period of not less than 48 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive rest day immediately following the second shall consist of not less than 24 additional consecutive hours.

"Right" is something to which one has a natural, legal or moral claim.

"Routine admission" means the admittance of a child following evaluation of an application for admission, completion of preplacement activities, and execution of a written placement agreement.

"Rules of conduct" means a listing of rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.

"Sanitize" means to wash or rinse with water containing a laundry bleach with an active ingredient of 5.25% sodium hypochlorite. The amount of bleach used may be in accordance with manufacturer's recommendation on the package.

"Seclusion" means placing a resident in a room with the door secured in any manner that prevents the resident from opening it.

"Secure custody facility" means a facility designed to provide, in addition to the appropriate treatment or service programs, secure environmental restrictions for children who must be detained and controlled on a 24-hour basis.

[*"Self-admission"* means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."]

"Self-contained residential facility" means a residential setting for 13 or more residents in which program activities are systematically planned and implemented as an integral part of the facility's staff functions (e.g., services are self-contained rather than provided primarily through community resources). The type of program may vary in intensity according to the needs of the residents. Such settings include nonmedical as well as state-operated hospital based care.

"Severe weather" means extreme environment or climate conditions which pose a threat to the health, safety or welfare of residents.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Single license/certificate" means a document which grants approval to operate a residential facility for children and which indicates the status of the facility with respect to compliance with applicable certification standards.

"Standard" means a statement which describes in measurable terms a required minimum performance level.

"Strip search" means a visual inspection of the body of a resident when that resident's clothing is removed and an inspection of the removed clothing including wigs, dentures, etc. except the performance of medical procedures by medical personnel.

"Substantial compliance" means a demonstration by a facility of full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonably safe and adequate care, while approved plans of action to correct findings of noncompliance are being implemented.

"Team" means one or more representatives of the licensing certification authority(ies) designated to visit a residential facility for children to review its compliance with applicable standards.

"Temporary care facility" means a facility specifically approved to provide a range of services, as needed, on an individual basis for a period not to exceed 60 days except that this term does not include secure detention facilities.

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"*Timeout*" means temporarily removing a resident and placing the resident alone in a special timeout room that is unfurnished or sparsely furnished and which contains few reinforcing environmental stimuli.

"*Treatment*" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.

"*Visually impaired child*" means one whose vision, after best correction, limits his ability to profit from a normal or unmodified educational or daily living setting.

["*Voluntary admission*" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."]

"*Wilderness camp*" means a facility which provides a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school and community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning and therapy with real living needs and problems from which the resident can develop a sense of social responsibility and self worth.

Article 2. Legal Base.

§ 1.2. [*Basis.*]

The Code of Virginia is the basis for the requirement that private residential facilities for children be licensed, certified and approved. It also authorizes the several departments to operate or reimburse certain public facilities. In addition, P. L. 94-63 and Title XX of the Social Security Act require the establishment of quality assurance systems.

§ 1.3. [*Responsibilities of the Board and Department of Youth and Family Services.*]

The State Board of Youth and Family Services and the Department of Youth and Family Services are responsible for approval of facilities used for the placement of court-referred juveniles, as specified by § 16.1-286 and §§ 66-13 and 66-14 of the Code of Virginia, for promulgating a statewide plan for detention and other care facilities and for prescribing standards for such facilities pursuant to §§ 16.1-310 through 16.1-314 of the Code of Virginia; and for establishing and maintaining a system of community group homes or other residential care facilities pursuant to § 66-24 of the Code of Virginia.

§ 1.4. [*Responsibilities of the Board of Education.*]

The State Board of Education is responsible for issuing

certificates to operate (licenses) for residential schools for the handicapped in the Commonwealth of Virginia, as specified in Chapter 16 of Title 22.1 (§§ 22.1-319 through 22.1-335) of the Code of Virginia. It is further responsible for the general supervision of the public school system for all school age residents of Virginia (for handicapped children, ages 2-21) and for approval of private nonsectarian education programs for the handicapped, as specified by § 22.1-218 of the Code of Virginia.

§ 1.5. [*Responsibilities of the Department of Mental Health, Mental Retardation and Substance Abuse Services.*]

The Department of Mental Health, Mental Retardation and Substance Abuse Services is responsible for licensure of facilities or institutions for the mentally ill, mentally retarded, and substance abusers within the Commonwealth of Virginia, as specified in Chapter 8 of Title 37.1 (§§ 37.1-179 through 37.1-189) of the Code of Virginia. It is also responsible for the certification of group homes as specified in § 37.1-199 of the Code of Virginia.

§ 1.6. [*Responsibilities of the Department of Social Services.*]

The Department of Social Services is responsible for licensure of certain child welfare agencies and facilities in Virginia, as specified in Chapter 10 of Title 63.1 (§§ 63.1-195 through 63.1-219) of the Code of Virginia. It is also responsible for the certification of local welfare/social services department "agency operated" group homes, as specified in § 63.1-56.1 of the Code of Virginia.

Article 3. Interdepartmental Agreement.

§ 1.7. [*Interdepartmental agreement.*]

An "Agreement for Interdepartmental Licensure and Certification of Children's Residential Facilities" agreement for interdepartmental regulation of children's residential facilities was approved by the Director of the Department of Corrections; the Commissioners of the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Social Services; and the Superintendent of Public Instruction and was initially signed on January 8-9, 1979 boards and agency heads of the departments. The A revised agreement was most recently updated effective September 30, 1984 approved on March 14, 1991.

This agreement commits the above departments to apply the same standards to both public and private facilities and provides a framework for:

1. The joint development and application of licensure and certification standards;
2. A single coordinated licensure, certification and approval process that includes:

- a. A single application for appropriate licensure, certification or approval;
- b. A system for review of compliance with applicable standards;
- c. A single license/certificate issued under the authority of the appropriate department(s) or board(s); and
- d. Clear lines of responsibility for the enforcement of standards.

3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental licensure/certification program.

Article 4. General Licensing/Certification Requirements.

§ 1.8. [*Acceptable level of compliance.*]

All residential facilities for children must demonstrate an acceptable level of compliance with the Interdepartmental Standards and other applicable licensure requirements (e.g., Mental Disabilities Licensure Standards) and shall submit a plan of corrective action acceptable to the licensing authority for remedying within a specified time any noncompliance in order to be licensed to operate or be certified to receive children in Virginia. Facilities also shall demonstrate an acceptable level of compliance with other applicable standards, such as Education Standards, Mental Disabilities Certification Standards and Department of Youth and Family Services Standards for Youth Facilities, and submit a plan of corrective action acceptable to the certification authority for remedying within a specified time any noncompliance in order to be certified or approved.

§ 1.9. [*Investigations.*]

Investigations of applications for licensure/certification will be carried out by representatives of the licensure/certification authority with each representative participating in the evaluation of compliance with applicable standards. The decision to license or certify will be based primarily on the findings and recommendations of these representatives of the licensing/certification authority.

§ 1.10. [*Corporations.*]

Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters.

Article 5. The License/Certificate.

§ 1.11. [*Single licensure/certification process.*]

The interdepartmental program will utilize a single licensure/certification process encompassing the Interdepartmental Standards and certification standards. A single document will be issued to each qualified facility which will, under appropriate statutory authority(ies), grant permission to operate a residential facility for children or certify approval for the placement of children using public funds and which will indicate the status of each facility with respect to compliance with applicable certification standards.

§ 1.12. [*Terms of license/certificate.*]

The terms of any license/certificate issued shall include: (i) the operating name of the facility; (ii) the name of the individual, partnership, association or corporation or public agency to whom the license/certificate is issued; (iii) the physical location of the facility; (iv) the nature of the population; (v) the maximum number of persons to be accepted for care; (vi) the effective dates of the license; and (vii) other specifications prescribed within the context of the standards.

§ 1.13. [*Nontransferability of license/certificate.*]

The license/certificate is not transferable and automatically expires when there is a change of ownership, sponsorship, or location, or when there is a substantial change in services or clientele which would alter the evaluation findings and terms under which the facility was licensed/certified.

§ 1.14. [*Facilities maintained on separate pieces of property.*]

Separate licenses/certificates are required for facilities maintained on separate pieces of property which do not have a common boundary, even though these may be operated under the same management and may share services or facilities.

§ 1.15. [*Posting of license/certificate.*]

The current license/certificate shall be posted at all times in a place conspicuous to the public.

Article 6. Types of Licenses/Certificates.

§ 1.16. [*Annual license/certificate.*]

An annual license/certificate may be issued to a residential facility for children that is subject to the licensure authority of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; or Social Services when its activities, services and requirements substantially meet the minimum standards and requirements set forth in the Interdepartmental Standards, applicable certification

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standards and any additional requirements that may be specified in relevant statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

§ 1.17. [*Provisional and conditional license/certificate.*]

A. A provisional license/certificate may be issued whenever an applicant is temporarily unable to comply with all of the requirements set forth in the Interdepartmental Standards or applicable certification standards and under the condition that the requirements will be met within a specified period of time. A facility with provisional licensure/certification is required to demonstrate that it is progressing toward compliance. A provisional license/certificate shall not be issued where the noncompliance poses an immediate and direct danger to the health and safety of the residents.

[A. B.] For those facilities for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority as specified in Chapter 8 of Title 37.1 of the Code of Virginia, at the discretion of the licensing authority a ~~provisional~~ conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. Such a ~~provisional~~ conditional license may be renewed, but such ~~provisional~~ conditional licensure and any renewals thereof shall not exceed a period of six successive months. A provisional license also may be issued to a facility which has previously been fully licensed when such facility is temporarily unable to comply with all licensing standards. However, pursuant to § 37-1-183.2 of the Code of Virginia, such a Such provisional license may be issued for any period not to exceed 90 days and shall not be renewed licensure and any renewals thereof shall not exceed a period of six successive months .

[B. C.] For those facilities for which the Department of Social Services is the licensing authority as specified in Chapter 10 of Title 63.1 of the Code of Virginia, a provisional license may be issued following the expiration of an annual license. Such provisional licensure and any renewals thereof shall not exceed a period of six successive months. At the discretion of the licensing authority, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements.

Such a conditional license may be renewed, but such conditional licensure and any renewals thereof shall not exceed a period of six successive months.

§ 1.18. [*Extended license/certificate.*]

An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i)

the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.19. [*Certificate of facility status.*]

A residential facility for children operating under certification by the Department of Youth and Family Services may be issued a certificate indicating the status of the facility with respect to compliance with applicable certification standards. Such a certificate is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.20. [*Term of certification.*]

The term of any certification(s) issued on an annual, provisional or extended license/certificate shall be coincident with the effective dates of the license.

§ 1.21. [*No fee required.*]

There shall be no fee to the licensee for licensure, certification or approval.

Article 7.

Preapplication Consultation Services.

§ 1.22. [*Availability of preapplication consultation services.*]

Upon receipt of an inquiry or a referral, preapplication consultation services will be made available by the Office of the Coordinator and the participating departments.

§ 1.23. [*Purpose of preapplication consultation.*]

Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;
2. To help the potential applicant explore the operational demands of a licensed/certified/approved residential facility for children;
3. To provide assistance in locating sources of information and technical assistance;

4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and

5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

Article 8. The Initial Application.

§ 1.24. [*Availability of application forms.*]

The application for a license to operate a residential facility for children shall be available from the Office of the Coordinator and the participating departments.

§ 1.25. [*Design of application forms.*]

All application forms and related information requests shall be designed to assure compliance with the provision of standards and relevant statutes.

§ 1.26. [*Submission of completed applications.*]

Completed applications along with other information required for licensure, certification or approval shall be submitted at least 60 days in advance of the planned opening date. Receipt shall be acknowledged.

Article 9. The Investigation.

§ 1.27. [*Review of facility.*]

Following receipt and evaluation of each completed application, a team will be organized made up of representatives from the departments which will be participating in the review of that particular facility.

§ 1.28. [*Investigation.*]

The team will arrange and conduct an on-site inspection of the proposed facility; a thorough review of the proposed services; and investigate the character, reputation, status, and responsibility of the applicant.

Article 10. Allowable Variance.

§ 1.29. [*Waiving a standard.*]

The licensing/certification authority has the sole authority to waive a standard either temporarily or permanently when in its opinion:

1. Enforcement will create an undue hardship;

2. The standard is not specifically required by statute or by the regulations of another government agency; and

3. Resident care would not be adversely affected.

§ 1.30. [*Request for variance.*]

Any request for an allowable variance shall be submitted in writing to the licensing/certification authority.

§ 1.31. [*Denial of request.*]

The denial of a request for a variance is appealable through the normal appeals process when it leads to the denial or revocation of licensure/certification.

Article 11. Decision Regarding Licensure/Certification.

§ 1.32. [*Notification of decision.*]

Within 60 days of receipt of a properly completed application, the investigation will be completed and the applicant will be notified in writing of the decision regarding licensure/certification.

Article 12. Issuance of a License, Certificate or Approval.

§ 1.33. Private facilities.

If licensure/certification (either annual, provisional or extended) is granted, the facility will be issued a license/certificate with an accompanying letter citing any areas of noncompliance with standards. This letter will also include any specifications of the license and may contain recommendations.

§ 1.34. Public and out-of-state facilities.

If approval is granted, the facility will be issued a certificate of approval indicating that it has met standards required for it to operate and receive public funds.

Article 13. Intent to Deny a License, Certificate or Approval.

§ 1.35. [*Notification of denial.*]

If denial of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

§ 1.36. Private facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) and sent by certified mail to the facility. This notice will include:

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1. A statement of the intent of the licensing/certification authorities to deny;

2. A list of noncompliances and circumstances leading to the denial; and

3. Notice of the facility's rights to a hearing.

§ 1.37. Locally-operated facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore, stating the reasons for the action, as well as the applicable state board or departmental sanctions or actions to which they are liable.

§ 1.38. State-operated public facilities.

The notification of intent to deny an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the Secretary stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.39. Out-of-state facilities.

The notification of denial of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

§ 1.40. The hearing.

An interdepartmental hearing will be arranged when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

§ 1.41. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of denial, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

Article 14. Renewal of License/Certificate.

§ 1.42. [*License/certificate renewal requirements.*]

Approximately 90 days prior to the expiration of a license/certificate, the licensee will receive notice of expiration and an application for renewal of the license/certificate. The materials to be submitted will be indicated on the application.

In order to renew a license/certificate, the licensee shall complete the renewal application and return it and any required attachments. The licensee should submit this material within 30 days after receipt in order to allow at least 60 days to process the application prior to expiration of the license.

§ 1.43. [*Process for review.*]

The process for review of the facility and issuance or denial of the license/certificate will be the same as for an initial application (See Part I, Articles 8, 9, 12, 13).

Article 15. Early Compliance.

§ 1.44. [*Replacing a provisional or conditional license/certificate.*]

A provisional or conditional license/certificate may be replaced with an annual license/certificate when all of the following conditions exist:

1. The facility complies with all standards as listed on the face of the provisional or conditional license/certificate well in advance of its expiration date and the facility is in substantial compliance with all other standards;
2. Compliance has been verified by an on-site observation by a representative(s) of the licensing/certification authority or by written evidence provided by the licensee; and
3. All other terms of the license/certificate remain the same.

§ 1.45. [*Written request required to replace a provisional license/certificate.*]

A request to replace a provisional license/certificate and to issue an annual license/certificate shall be made in writing by the licensee.

§ 1.46. [*Effective date of new annual license/certificate.*]

If the request is approved, the effective date of the new annual license/certificate will be the same as the beginning date of the provisional license/certificate.

Article 16. Situations Requiring a New Application.

§ 1.47. [*When to file a new application.*]

A new application shall be filed in the following circumstances:

1. Change of ownership or sponsorship;
2. Change of location; or
3. Substantial change in services provided or target population.

Article 17. Modification of License/Certificate.

§ 1.48. [*Modification of license/certificate.*]

The conditions of a license/certificate may be modified during the term of the license with respect to the number of residents, the age range or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a license/certificate.

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days as to whether the modification is approved or a new license is required.

Article 18. Visitation of Facilities.

§ 1.49. [*Monitoring compliance.*]

Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

Article 19. Investigation of Complaints and Allegations.

§ 1.50. [*Investigation of complaints.*]

The four departments are responsible for complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

Article 20.

Revocation of License/Certificate.

§ 1.51. Grounds for revocation.

The license, certificate or approval may be revoked when the licensee:

1. Violates any provision of the applicable licensing laws or any applicable standards made pursuant to such laws;
2. Permits, aids or abets the commission of any illegal act in such facility;
3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; or
4. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the licensing/certification authority or fails to correct such deviations within the time specified.

§ 1.52. Notification of intent to revoke.

If revocation of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

§ 1.53. Private facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the licensing/certification authorities to revoke;
2. A list of noncompliances and circumstances leading to the revocation; and
3. Notice of the facility's rights to a hearing.

§ 1.54. Locally-operated facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore stating the reasons for the action as well as the applicable state board or departmental sanctions or actions to which they are liable.

§ 1.55. State-operated public facilities.

The notification of intent to revoke an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the appropriate Secretary in the

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Governor's Cabinet, stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.56. Out-of-state facilities.

The notification of revocation of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

§ 1.57. The hearing.

An interdepartmental hearing will be arranged, when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, §9-6.14:1 et seq. of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

§ 1.58. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of revocation, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

§ 1.59. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the licensing/certification authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

§ 1.60. Appeals.

A. Following receipt of the final order transmitting the decision of the licensing/certification authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of

Virginia.

PART II. ORGANIZATION AND ADMINISTRATION.

Article I. Governing Body.

§ 2.1. [*Identification of licensee.*]

The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. [*Delegation of responsibilities.*]

The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

Article 2. Responsibilities of the Licensee.

§ 2.3. [*Appointment of chief administrative officer.*]

The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. [*Written policies.*]

The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and
2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. [*Philosophy and objectives.*]

The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. [*Program review.*]

The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. [*Program changes.*]

The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

Article 3. Fiscal Accountability.

§ 2.8. [*Plan of financing.*]

The facility shall have a documented plan of financing which gives evidence that there are sufficient funds to operate.

§ 2.9. [*Availability of funds.*]

A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. [*Financial responsibility of corporation, unincorporated organization or association, individual or partnership.*]

A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and
2. A balance sheet showing assets and liabilities.

§ 2.11. [*Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:*

1. A copy of the facility's most recently completed financial audit;
2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and
3. A working budget showing projected revenue and expenses for the coming year. *Repealed.*]

§ 2.12. [*Financial responsibility of state or local government agencies.*]

Facilities operated by state or local government agencies, boards and commissions [that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process] shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and

projected expenses for the coming year.

§ 2.13. [*Financial report.*]

Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships [that do not have a rate set in accordance with the Interdepartmental Rate Setting Process] shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;
2. A working budget showing projected revenue and expenses for the coming year;
3. A balance sheet showing assets and liabilities; and
4. A written assurance from the licensee that the documentation provided for in subdivisions 1, 2, and 3 above presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. [*Additional evidence of financial responsibility.*]

The facility shall provide additional evidence of financial responsibility as the licensing authority, at its discretion, may require.

Article 4. Internal Operating Procedures.

§ 2.15. [*Financial record keeping.*]

There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.16. [*Collection and disbursement of funds.*]

There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. [*Separation of financial records from other records.*]

There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

Article 5. Insurance.

§ 2.18. [*Liability insurance on premises and operations.*]

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A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. [*Liability insurance on vehicles.*]

There shall be liability insurance on vehicles operated by the facility.

Article 6.
Bonding.

§ 2.20. [*Bonding.*]

Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

Article 7.
Fund-Raising.

§ 2.21. [*Fund raising.*]

The facility shall not use residents in its fund-raising activities without written permission of legal guardian.

Article 8.
Relationship to Licensing Authority.

§ 2.22. [*Establishing compliance.*]

The facility shall submit or make available to the licensing authority such reports and information as the licensing authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. [*Notification of changes.*]

The governing body or its official representative shall notify the licensing authority(ies) within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and
2. Any pending changes in the program.

§ 2.24. [*Response to disaster, fire or emergency conditions.*]

In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;
2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and

3. Notify the licensing authority(ies) of the conditions at the facility and the status of the residents as soon as possible.

Article 9.
Participation of Residents in Research.

§ 2.25. [*Participation of residents in research.*]

The facility shall establish and implement written policies and procedures regarding the participation of residents as subjects in research that are consistent with Chapter 13 of Title 37.1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of residents as subjects of human research as defined by the above statute.

Article 10.
Residents' Records.

§ 2.26. [*Case record requirements.*]

A separate case record on each resident shall be maintained and shall include all correspondence relating to the care of that resident.

§ 2.27. [*Updating case records.*]

Each case record shall be kept up to date and in a uniform manner.

§ 2.28. [*Accessibility to staff.*]

Case records shall be maintained in such manner as to be accessible to staff for use in working with the resident.

Article 11.
Confidentiality of Residents' Records.

§ 2.29. [*Authorization for access.*]

The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. [*Confidentiality policy and procedures.*]

There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the resident.

Article 12.
Storage of Confidential Records.

§ 2.31. [*Limitations on access.*]

Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. [*Storage of records.*]

Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. [*Records not in use.*]

When not in use, records shall be kept in a locked compartment or in a locked room.

Article 13.
Disposition of Residents' Records.

§ 2.34. [*Retention of records.*]

Residents' records shall be kept in their entirety for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. [*Information permanently maintained.*]

Permanent information shall be kept on each resident even after the disposition of the resident's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Resident's name;
2. Date and place of resident's birth;
3. Dates of admission and discharge;
4. Names and addresses of parents and siblings; [and]
5. Name and address of legal guardian [;]
6. Names and addresses of persons to whom resident was discharged;
7. Forwarding address of resident, if known; and
8. Reason for discharge.]

§ 2.36. [*Policy for disposition of records.*]

Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

Article 14.
Residential Facilities for Children Serving Persons
Over the Age of 17 Years.

§ 2.37. [*Residential facilities for children serving persons over the age of 17 years.*]

Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of

age, shall comply with the requirements of the Interdepartmental Standards for the care of all residents, regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the licensing/certification authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the residents.

PART III.
PERSONNEL.

Article 1.
Health Information.

§ 3.1. [*Health information.*]

Health information required by these standards shall be maintained for the chief administrative officer, for all staff members who come in contact with residents or handle food, and for any individual who resides in a building occupied by residents including any such persons who are neither staff members nor residents of the facility.

Article 2.
Initial Tuberculosis Examination and Report.

§ 3.2. [*Initial screening for tuberculosis.*]

Within 30 days of employment or contact with residents each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

§ 3.3. [*Statement of test results.*]

Each individual shall submit a statement that he is free of tuberculosis in a communicable form including the type(s) of test(s) used and the test result(s).

§ 3.4. [*Statement signature.*]

The statement shall be signed by licensed physician the physician's designee, or an official of a local health department.

§ 3.5. [*Filing of statement.*]

The statement shall be filed in the individual's record.

Article 3.
Subsequent Evaluations for Tuberculosis.

§ 3.6. [*Subsequent evaluations for tuberculosis.*]

Any individual who comes in contact with a known case

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of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

Article 4. Physical or Mental Health of Personnel.

§ 3.7. [*Examination of physical or mental health.*]

At the request of the licensee/administrator of the facility or the licensing authority a report of examination by a licensed physician shall be obtained when there are indications that the care of residents may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. [*Indication of physical or mental condition.*]

Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of residents or which would prevent the performance of duties:

1. Shall immediately be removed from contact with residents and food served to residents ; and
2. Shall not be allowed contact with residents or food served to residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Article 5. Qualifications.

§ 3.9. [*Minimum position qualifications.*]

Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

§ 3.10. [*Compliance with position standards.*]

Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. [*Contracted personnel.*]

When services or consultations are obtained on a contract basis they shall be provided by professionally

qualified personnel.

Article 6. Job Descriptions.

§ 3.12. [*Contents of job description.*]

For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;
2. The duties and responsibilities of the incumbent;
3. The job title of the immediate supervisor; and
4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. [*Distribution of job description.*]

A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

Article 7. Written Personnel Policies and Procedures.

§ 3.14. [*Approval of written personnel policies.*]

The licensee shall approve written personnel policies.

§ 3.15. [*Communication of written personnel policies.*]

The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. [*Written policies regarding job requirements.*]

The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified in the job description for that staff position.

§ 3.17. [*Written policies regarding child abuse and neglect.*]

Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for management of resident behavior ;
2. Procedures for handling accusations against staff; and
3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during

any investigation. (See § 5.143)

§ 3.18. [*Staff knowledge of policies and procedures.*]

Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

Article 8.
Personnel Records.

§ 3.19. [*Contents of personnel records.*]

A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:
 - a. Identifying information (name, address, phone number, social security number, and any names previously utilized);
 - b. Educational history; and
 - c. Employment history.
2. Written references or notations of oral references;
3. Reports of required health examinations;
4. Annual performance evaluations; and
5. Documentation of staff development activities.

§ 3.20. [*Retention of personnel records.*]

Each personnel record shall be retained in its entirety for two years after employment ceases.

§ 3.21. [*Information permanently maintained.*]

Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

Article 9.
Staff Development.

§ 3.22. [*Staff orientation and training.*]

New employees, relief staff, volunteers and students, within one calendar month of employment, shall be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. [*Ongoing staff development.*]

Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. [*Staff supervision.*]

Regular supervision of staff shall be provided.

§ 3.25. [*Additional staff development.*]

Regular supervision of staff shall not be the only method of staff development.

§ 3.26. [*Documentation.*]

Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10.
Staff Supervision of Children.

§ 3.27. [*Number of consecutive work days.*]

No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency except:

1. A child care staff member may attend training FOLLOWING WORKING AT THE FACILITY without a rest day. However, the staff member shall not work more than 10 consecutive days between rest days including working at the facility and training.

2. A child care staff member may accompany an excursion FOLLOWING WORKING AT THE FACILITY without a rest day. However, the staff member shall not work more than 14 consecutive days between rest days including working at the facility and the excursion.

3. A child care staff member accompanying an excursion shall not work at the facility for more than two consecutive days PRIOR TO THE EXCURSION.

4. A child care staff member may return to work at the facility without a rest day AFTER ACCOMPANYING AN EXCURSION OR ATTENDING TRAINING. However, a staff member who returns to work at the facility shall not work more than six consecutive days between rest days including excursion and training days.

§ 3.28. [*Number of rest days.*]

Child care staff shall have an average of not less than two rest days per week in any four-week period. This shall

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be in addition to vacation time and holidays.

§ 3.29. [*Number of consecutive work hours.*]

Child care staff other than live in staff shall not be on duty more than 16 consecutive hours except in an emergency.

§ 3.30. [*Number of staff on duty.*]

There shall be at least one responsible adult on the premises and on duty at all times that one or more children are present.

§ 3.31. [*Written policies and procedures.*]

Each facility shall develop and implement written policies and procedures which address deployment of staff and supervision of children. The number of children being supervised may vary among staff members except that the total number of child care staff on duty shall not be less than the minimum number required by §§ 3.33 and 3.34 to supervise the total number of children on the premises and participating in off campus, facility sponsored activities.

§ 3.32. [*Review of staff development policies.*]

Written policies and procedures governing deployment of staff shall be reviewed and approved by the regulatory authority prior to implementation.

§ 3.33. [*Supervision during waking hours.*]

During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty and responsible for supervision of every 10 children, or portion thereof, on the premises or participating in off campus, facility sponsored activities except that:

1. In approved independent living programs, there shall be one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off campus, facility sponsored activities;
2. For children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every three children who are on the premises or participating in off campus, facility sponsored activities except that this requirement shall not apply to severely, multihandicapped, nonambulatory children; and
3. For severely multihandicapped, nonambulatory children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every six children.

§ 3.34. Supervision during sleeping hours.

A. During the hours that residents normally are sleeping there shall be no less than one child care staff member on duty and responsible for supervision of every 16 children, or portion thereof, on the premises.

B. There shall be at least one child care staff member awake and on duty:

1. In each building where 30 or more children are sleeping,
2. On each floor where 30 or more children are sleeping, and
3. On each major wing of each floor where 30 or more children are sleeping.

§ 3.35. Emergency telephone numbers.

A. When residents are away from the facility they and the adults responsible for their care during that absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

§ 3.36. [*Privacy requirements.*]

Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This requirement shall not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

§ 3.37. Searches.

A. If a facility conducts pat downs it shall develop and implement written policies and procedures governing them. A facility that does not conduct pat downs shall have a written policy prohibiting them.

B. Written policies and procedures governing pat downs shall be reviewed and approved by the regulatory authority prior to implementation.

C. Written policies and procedures governing pat downs shall include:

1. A requirement that pat downs be limited to instances where they are necessary to prohibit contraband;

2. A listing of the specific circumstances when pat downs are permitted;

3. A statement that pat downs shall be conducted only in the specific circumstances enumerated in the written policies and procedures;

4. A requirement that pat downs be conducted by personnel of the same gender as the client(s) being searched;

5. A listing of the personnel authorized to conduct pat downs;

6. A statement that pat downs shall be conducted only by personnel authorized to conduct searches by the written policies and procedures;

7. A requirement that witnesses, if any, be of the same gender as the client(s) being searched; and

8. Provisions to ensure the client's privacy.

D. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations, or

2. As ordered by a court of competent jurisdiction.

Article 11. The Chief Administrative Officer.

§ 3.38. [*Responsibilities of chief administrative officer.*]

The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;
2. Implementation of all policies;
3. Maintenance of the physical plant; and
4. Fiscal management of the residential facility for children.

§ 3.39. [*Delegation of duties.*]

Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. [*Description of delegated duties.*]

Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. [*Absence of chief administrative officer.*]

A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

Article 12. The Program Director.

§ 3.42. [*Responsibilities of program director.*]

The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

§ 3.43. [*Educational requirements for program director.*]

A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or

2. A graduate degree from an accredited college or university in a profession related to child care and development; or

3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. [*Who may serve as program director.*]

Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. [*Full-time program director.*]

When a facility is licensed/certified to care for 13 or more residents, a full-time, qualified staff member shall fulfill the duties of the program director.

Article 13. Child and Family Service Worker(s).

§ 3.46. [*Provision of counseling and social services.*]

If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

§ 3.47. [*Educational requirements for child and family service worker.*]

If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

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1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or

2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or

3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or

4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:

a. Social Work, or

b. Psychology, or

c. Counseling (individual, group or family).

Article 14. Child Care Staff.

§ 3.48. [*Daily living program development.*]

In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. [*Coordination of services.*]

A designated staff member shall be responsible for the coordination of all services offered to each resident.

§ 3.50. [*Orientation, training and supervision of child care workers.*]

A designated staff member(s) shall have responsibility for the orientation, training and supervision of child care workers.

§ 3.51. [*Educational requirements for supervision of child care staff.*]

An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of

five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. [*Responsibilities of child care workers.*]

The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Management of resident behavior ; and

4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. [*Age requirements for child care workers.*]

A child care worker shall be no less than 18 years of age.

§ 3.54. [*Educational requirements for child care workers.*]

A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and

2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

Article 15. Relief Staff.

§ 3.55. [*Relief staff.*]

Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and

2. Unscheduled absences of permanent staff.

Article 16. Medical Staff.

§ 3.56. [*Availability of licensed physician.*]

Services of a licensed physician shall be available for treatment of residents as needed.

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§ 3.57. [*Nursing license requirement.*]

Any nurse employed shall hold a current nursing license issued by the Commonwealth of Virginia.

§ 3.58. [*First aid.*]

At all times that children are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. [*Cardiopulmonary resuscitation.*]

At all times that children are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

Article 17. Recreation Staff.

§ 3.60. [*Recreation staff.*]

There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;
2. A variety of skills in group activities;
3. A knowledge of community recreational facilities; and
4. An ability to motivate children to participate in constructive activities.

Article 18. Volunteers and Students Receiving Professional Training.

§ 3.61. [*Utilization of volunteers and students.*]

If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. [*Dependence on volunteers and students.*]

The facility shall not be dependent upon the use of volunteers/students to ensure provision of basic services.

§ 3.63. [*Selection, training and supervision of volunteers and students.*]

The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. [*Responsibilities of volunteers and students.*]

Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. [*Qualifications of volunteers and students.*]

All volunteers/students shall have qualifications appropriate to the services they render based on experience or orientation.

§ 3.66. [*Confidentiality requirements.*]

Volunteers/students shall be subject to all regulations governing confidential treatment of personal information.

§ 3.67. [*Liability and protection.*]

Volunteers/students shall be informed regarding liability and protection.

Article 19. Support Functions.

§ 3.68. [*Provision of support functions.*]

Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. [*Requirements for food handling.*]

All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. [*Staff provision of support functions.*]

Child care workers and other staff may assume the duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. [*Resident provision of support functions.*]

Residents shall not be solely responsible for support functions.

PART IV. RESIDENTIAL ENVIRONMENT.

Article 1. Location.

§ 4.1. [*Location.*]

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A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

Article 2. Buildings, Inspections and Building Plans.

§ 4.2. [*Inspection and approval of buildings and equipment.*]

All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. [*Building inspection requirements.*]

At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by:

1. State fire officials or local fire authorities, as applicable, whose inspection shall determine compliance with the "Virginia Statewide Fire Prevention Code"; and
2. State or local health authorities, whose inspection and approval shall include:
 - a. General sanitation;
 - b. The sewage disposal system;
 - c. The water supply;
 - d. Food service operations; and
 - e. Swimming pools.

§ 4.4. [*Suitability of buildings.*]

The buildings shall be suitable to house the programs and services provided.

Article 3. Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. [*Approval of building plans.*]

Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing licensed buildings shall be submitted to and approved by the licensing/certification authority and the following authorities, where applicable, before construction begins:

1. Local building officials;

2. Local fire departments;

3. Local or state health departments; and

4. Office of the State Fire Marshal.

§ 4.6. [*Documentation of approval.*]

Documentation of the approvals required by § 4.5 shall be submitted to the licensing authority(ies).

Article 4. Heating Systems, Ventilation and Cooling Systems.

§ 4.7. [*Minimum room temperature.*]

Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. [*Outside ventilation.*]

Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

§ 4.9. [*Screening doors and windows.*]

All doors and windows capable of being used for ventilation shall be fully screened unless screening particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. [*Cooling or ventilation requirements.*]

Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 85°F.

Article 5. Lighting.

§ 4.11. [*Artificial lighting.*]

Artificial lighting shall be by electricity.

§ 4.12. [*Areas to be lit.*]

All areas within buildings shall be lighted for safety.

§ 4.13. [*Night lights.*]

Night lights shall be provided in halls and bathrooms.

§ 4.14. [*Sufficient lighting requirement.*]

Lighting shall be sufficient for the activities being performed in a specific area.

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§ 4.15. [*Emergency lighting.*]

Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. [*Outside lighting requirements.*]

Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

Article 6. Plumbing and Toilet Facilities.

§ 4.17. [*Plumbing maintenance.*]

All plumbing shall be maintained in good operational condition.

§ 4.18. [*Supply of hot and cold running water.*]

There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. [*Precautions against scalding.*]

Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. [*Toilet facilities.*]

There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. [*Toilet facilities; ratio.*]

There shall be at least one toilet, one hand basin and one shower or tub for every eight residents.

§ 4.22. [*Toilet facilities in facilities built after July 1, 1981.*]

In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four residents.

§ 4.23. [*Toilet facilities for staff.*]

When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. [*Mirrors.*]

There shall be at least one mirror securely fastened to

the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. [*Personal necessities.*]

At all times an adequate supply of personal necessities shall be available to the residents for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

§ 4.26. [*Wash cloths and towels.*]

Clean, individual wash cloths and towels shall be available once each week or more often if needed.

Article 7. Facilities and Equipment for Residents with Special Toileting Needs.

§ 4.27. [*Special toileting needs.*]

When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.
2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.
3. Adapter seats and toilet chairs shall be cleaned with warm soapy water immediately after each use.
4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual child or themselves with toileting.

Article 8. Sleeping Areas.

§ 4.28. [*Separate sleeping areas for boys and girls.*]

When residents are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. [*Number of children limited.*]

No more than four children may share a bedroom or sleeping area.

§ 4.30. [*Children with special needs.*]

When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices

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for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. [*Space around beds.*]

There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. [*Space requirements.*]

In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;
2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;
3. There shall be not less than 60 square feet of floor area per person in rooms accommodating two or more persons; and
4. All ceilings shall be at least 7-1/2 feet in height.

§ 4.33. [*Bed requirements.*]

Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. [*Changing bed linens.*]

Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. [*Mattresses and pillows.*]

Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. [*Cribs.*]

Cribs shall be provided for residents under two years of age.

§ 4.37. [*Drawers and closets.*]

Each resident shall be assigned drawer space and closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. [*Sleeping environment.*]

The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. [*Smoking prohibited.*]

Smoking by any person shall be prohibited in sleeping areas.

Article 9.

Privacy for Residents.

§ 4.40. [*Toilet.*]

Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. [*Bathtubs and showers.*]

Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. [*Windows in bathrooms.*]

Windows in bathrooms shall provide for privacy.

§ 4.43. [*Sleeping areas.*]

Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. [*Windows in sleeping and dressing areas.*]

Windows in sleeping and dressing areas shall provide for privacy.

Article 10.

Living Rooms/Indoor Recreation Space.

§ 4.45. [*Living rooms.*]

Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. [*Indoor recreation space.*]

In facilities licensed to care for more than 12 residents there shall be indoor recreational space that contains recreational equipment appropriate to the ages and interests of the residents. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

Article 11. Study Space.

§ 4.47. [*Study space requirements.*]

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Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. [*Study space environment.*]

Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

Article 12. Kitchen and Dining Areas.

§ 4.49. [*Dining areas.*]

Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate for the sizes and ages of the residents.

§ 4.50. [*Kitchen facilities.*]

Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. [*Emergency exits from walk-in refrigeration units.*]

Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

Article 13. Laundry Areas.

§ 4.52. [*Laundry areas.*]

If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

Article 14. Storage.

§ 4.53. [*Storage.*]

Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

Article 15. Staff Quarters.

§ 4.54. [*Separate bathroom and bedroom.*]

A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more except, that when there are no more than four persons, including staff and family of staff, residing in, or on duty, in the living unit, a private bathroom is not required for staff.

§ 4.55. [*Sharing of residents' bedrooms prohibited.*]

Off duty staff and members of their families shall not share bedrooms with residents.

§ 4.56. [*Separate living room.*]

When 13 or more residents reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. [*Provision of beds.*]

When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

Article 16. Office Space.

§ 4.58. [*Office space.*]

Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

Article 17. Buildings and Grounds.

§ 4.59. [*Maintenance of buildings and grounds.*]

Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. [*Outdoor recreational space.*]

There shall be outdoor recreational space appropriately equipped for the residents.

Article 18. Equipment and Furnishings.

§ 4.61. [*Suitability of furnishings and equipment.*]

All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. [*Telephone accessibility to staff.*]

There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. [*Possession and use of weapons.*]

The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other

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weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or
2. Kept under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

Article 19. Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which residents and staff come in contact.

Article 20. Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

Article 21. Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

Article 22. Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

Article 23. Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

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§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98. Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24 hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing.

§ 4.105. Solid wastes which are generated in primitive camps shall be disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

Article 24.

Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia

Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent fly breeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

Article 25.

Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

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§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

Article 26.

Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated for O°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

Article 27.

Clothing in Primitive Campsites.

§ 4.130. Each resident shall be provided with an adequate supply of clean clothing suitable for outdoor living appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each resident.

§ 4.132. An adequate personal storage area shall be available for each resident.

Article 28.

Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacent to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other combustion at the primitive campsite.

PART V.

PROGRAMS AND SERVICES.

Article 1:

Criteria for Admission:

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures including necessary referral documentation.

§ 5.2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5.3. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

Article 2:

Admission of Blind or Visually Impaired Children:

§ 5.5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not

previously obtained).

§ 5.6. Provision of the services of the Department for the Visually Handicapped shall be documented in the resident's record.

§ 5.7. If the services of the Department for the Visually Handicapped are not obtained the resident's placement shall be considered inappropriate.

Article 3.

Interstate Compact on the Placement of Children.

§ 5.8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5.9. Documentation of approval of the compact administrator shall be retained in the resident's record.

Article 4.

Documented Study of the Child.

§ 5.10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to secure detention facilities.

§ 5.11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5.12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a routine admission or 30 days after an emergency admission each resident's record shall contain all of the elements of the documented study.

§ 5.13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the resident's record):

1. A formal request or written application for admission;
2. Identifying information documented on a face sheet (see § 5.14);
3. Physical examination as specified in § 5.50;
4. Medical history (see § 5.15);
5. A statement, such as a report card, concerning the

resident's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;

6. Results of any psychiatric or psychological evaluations of the resident, if applicable;

7. Social and developmental summary (see § 5.16);

8. Reason for referral; and

9. Rationale for acceptance.

§ 5.14. Identifying information on a face sheet shall include:

1. Full name of resident;

2. Last known residence;

3. Birthdate;

4. Birthplace;

5. Sex of resident;

6. Racial and national background;

7. Resident's social security number; -

8. Religious preference of resident or parents; -

9. Custody status indicating name and address of legal guardian, if any;

10. Names, addresses and telephone numbers for emergency contacts, parents, legal guardians or representative of the child-placing agency, as applicable; and

11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the resident's parents and siblings, if known;

2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the resident;

3. Psychological, psychiatric and neurological examinations, if applicable;

4. Name, address and telephone number of resident's former physician(s), when information is available; and

5. Name, address and telephone number of resident's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

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1. Description of family structure and relationships;
2. Previous placement history;
3. Current behavioral functioning including strengths, talents, and problems;
4. Documentation of need for care apart from the family setting;
5. Names, address(es), Social Security numbers, and marital status of parents; and
6. Names, ages, and sex of siblings.

Article 5.

Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's admission by documenting the following:

1. A preplacement visit by the resident accompanied by a family member, an agency representative or other responsible adult;
2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the residents and activities; and
3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

Article 6.

Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or by written placement agreement with legal guardians except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

Article 7.

Written Placement Agreement.

§ 5.19. At the time of admission the resident's record shall contain the written placement agreement from the individual or agency having custody or a copy of the court order, or both, authorizing the resident's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the resident's placement in the facility designating the name and physical location of the facility and the name of the resident;
2. Recognize the rights of each of the parties involved

in the placement clearly defining areas of joint responsibility in order to support positive placement goals;

3. Include financial responsibility, where applicable;

4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;

5. Address the matter of all absences from the facility and shall specify the requirements for notifying or obtaining approval of the party having legal responsibility for the resident. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the resident is required.

Article 8.

Emergency Admissions.

§ 5.21. Facilities other than temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and
2. Place in each resident's record a written request for care or documentation of an oral request for care.

Article 9.

Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;
2. If the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution the facility shall obtain and document verbal approval for placement from the legal guardian within eight hours of the child's arrival at the facility and a written placement agreement shall be completed and signed by the legal guardian and facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival, whichever is later;
3. Identifying information documented on a face sheet which shall include:

- a. Full name of resident;
- b. Birthdate;

- e. Sex of resident;
 - d. Racial/ethnic background;
 - e. Last known address;
 - f. Names and addresses of persons or agencies to contact in case of emergency;
 - g. Date of admission; and
 - h. Resident's social security number;
4. The resident's health status including:
- a. A statement of known and obvious illnesses and handicapping conditions;
 - b. A statement of medications currently being taken;
 - c. A statement of the resident's general health status; and
 - d. Name, address and telephone number of the resident's physician, if known; and
5. A statement describing the resident's need for immediate temporary care.

§ 5.23. When identifying information is not available the reason shall be documented on the face sheet.

Article 10: Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a resident will be discharged when the resident and his legal guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

- 1. Criteria for a resident's completion of the program as described for compliance with § 2.5; and
- 2. Conditions under which a resident may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each resident's record shall contain the following:

- 1. Documentation that the termination of care has been planned with the parent/ legal guardian/child-placing agency and with the resident; and
- 2. A written discharge plan and documentation that it was prepared and discussed with the resident, when

appropriate, prior to the resident's discharge. The plan shall contain at least:

- a. An assessment of the resident's continuing needs; and
- b. A recommended plan for services in the resident's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the resident's record shall contain the following information:

- 1. Date of discharge;
- 2. Reason for discharge;
- 3. Documentation that the reason for discharge was discussed with the parent/ legal guardian/child-placing agency and, when appropriate, with the resident, except that this requirement does not apply to court ordered discharges;
- 4. Forwarding address of the resident, if known;
- 5. Name and address of legally responsible party to whom discharge was made; and
- 6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the resident's record no later than 30 days after discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

- 1. Length of a resident's residence at the time of discharge;
- 2. The name of the resident's designated case coordinator, if assigned;
- 3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;
- 4. Summary of the resident's overall progress during placement;
- 5. Summary of family contacts during placement, if any; and
- 6. Reasons for discharge.

§ 5.30. Except in secure detention, residents shall be discharged only to the legally responsible party from whom they were accepted except (1) in cases where legal responsibility has been transferred to another person or agency during the period of the resident's stay in the

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facility or (ii) in cases where a resident committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

Article 11.

Placement of Residents Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a resident away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

Article 12. Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each resident, within 30 days of admission and placed in the resident's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

Article 1.

Authority to Accept Children.

§ 5.1. [Acceptance of children.]

Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement shall not apply to temporary care facilities when a [~~voluntary admission~~ self-admission] is made according to Virginia law.

Article 2.

Admission Procedures.

§ 5.2. [Criteria for admission.]

Each residential facility for children shall have written criteria for admission. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures.

§ 5.3. [Accessibility of criteria.]

The facility's criteria for admission shall be accessible to prospective residents, legal guardians, and placing agencies.

§ 5.4. [Acceptance based on needs of services provided.]

The facility shall accept and maintain only those

children whose needs are compatible with those services provided through the facility unless a child's admission is required by [~~court~~] order [of a court of competent jurisdiction] .

§ 5.5. [Respite care.]

If a facility is specifically approved to provide residential respite care, acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

Article 3.

Interstate Compact on the Placement of Children.

§ 5.6. [Retention of documentation of prior approval.]

Documentation of the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside the Commonwealth of Virginia [except that the requirements of this article shall not apply to a facility providing documentation that the administrator of the Interstate Compact has determined the facility is statutorily exempt from the Compact's provisions] .

§ 5.7. [Notification of discharge.]

In cases of interstate placement, no later than 10 days after discharge the resident's record shall contain documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

Article 4.

Emergency and [~~Voluntary~~ Admissions Self-Admissions.]

§ 5.8. [Policies and procedures required.]

Facilities accepting emergency or [~~voluntary admissions~~ self-admissions] shall:

1. Have written policies and procedures governing such admissions;
2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care or documentation of an oral request for care; and
3. Have written policies and procedures for obtaining a written placement agreement signed by the legal guardian [or the order of a court of competent jurisdiction] .

§ 5.9. [Written placement agreement.]

Facilities which accept emergency or [~~voluntary admissions~~ self-admissions] shall make and document

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prompt efforts to obtain a written placement agreement signed by the legal guardian [or the order of a court of competent jurisdiction] .

Article 5. Application for Admission.

§ 5.10. [Evaluation of application.]

Admission, other than an emergency or diagnostic admission, shall be based on an evaluation of an application for admission except that the requirements of this article shall not apply (i) to temporary care facilities, [~~or~~] (ii) to court ordered placements [, or (iii) to transfer of a resident between residential facilities located in Virginia and operated by the same sponsor] .

§ 5.11. Application for admission.

A. [~~The facility~~ Facilities accepting routine admissions] shall develop an application for admission which is designed to compile information necessary to determine:

1. The physical needs of the prospective resident,
2. The educational needs of the prospective resident,
3. The emotional needs of the prospective resident,
4. The health needs of the prospective resident,
5. The protection needs of the prospective resident,
6. The suitability of the prospective resident's admission,
7. Whether the prospective resident's admission would pose any significant risk to the prospective resident [~~or~~ ,] the facility's residents, [or the facility's staff] , and
8. [~~Sufficient information~~ Information necessary] to develop a service plan.

B. The facility's application for admission shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

C. The application for admission, which follows the facility's approved format, shall be completed in its entirety prior to acceptance for care.

§ 5.12. [Record keeping.]

[In facilities required to base acceptance for care on an application for admission, each The] resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

Article 6. Preplacement Activities Documentation.

§ 5.13. [Preplacement.]

At the time of [each routine] admission [~~except emergency or voluntary admissions; involuntary admissions to security settings or admissions by court order~~ ,] the facility shall document:

1. A preplacement visit by the resident accompanied by a family member, agency representative or other responsible adult;
2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission; and
3. Written confirmation of the admission decision to the legal guardian and to the placing agency.

Article 7. Written Placement Agreement.

§ 5.14. Written placement agreement.

A. The requirements of this article shall not apply to [a facility which accepts] admissions [~~only based~~] upon receipt of the order of a court of competent jurisdiction. The record of each person admitted [to such facility based on a court order] shall contain a copy of the court order.

B. The facility [, except a facility which accepts admission only upon receipt of the order of a court of competent jurisdiction,] shall develop a written placement agreement which:

1. Authorizes the resident's placement,
2. Addresses acquisition of and consent for any medical treatment needed by the resident,
3. Addresses the rights and responsibilities of each party involved,
4. Addresses financial responsibility for the placement, and
5. Addresses resident absences from the facility.

C. The facility's placement agreement shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

D. Each resident's record shall contain a completed placement agreement, which follows the facility's approved format, signed by the legal guardian or placing agency prior to a routine admission.

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Article 8. Face Sheet.

§ 5.15. Face sheet.

A. The facility shall develop a face sheet which is designed to compile the identifying information necessary to enable the facility to provide routine and emergency care.

B. The face sheet shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

C. At the time of admission, each resident's record shall contain a completed face sheet which follows the facility's approved format.

D. Prompt efforts shall be made and documented to obtain any information which is missing or not available at the time of admission.

E. Information on the face sheet shall be [~~corrected as~~ updated when] changes occur.

Article 9. Service Plan.

§ 5.16. [Service plan.]

An individualized service plan shall be developed and placed in the file of each resident within 30 days of admission except that the requirements of this article do not apply to secure detention facilities.

§ 5.17. [Temporary care facility; development and placement of service plan.]

An individualized service plan shall be developed and placed in the file of each resident of a temporary care facility within 72 hours of admission.

§ 5.18. Service plan format.

A. The facility shall develop a format for individualized service plans which is designed to describe the:

1. [~~Needs~~ Strengths and needs] of the resident,
2. Resident's current level of functioning,
3. Goals [and strategies] established for the resident,
4. [~~Family's~~ Projected family] involvement, [and]
5. Projected date for accomplishing each goal [: , and
6. Status of discharge planning except that this requirement shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction.]

B. The facility's format shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

C. Each plan shall follow the facility's approved format.

§ 5.19. [Staff responsibility.]

Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan.

§ 5.20. [Participation in development of service plan.]

The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan, in reviewing the plan quarterly, and in revising the plan as necessary:

1. The resident;
2. The resident's family, legal guardian, or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.21. [Statement of participation.]

A statement describing the participation, or lack thereof, of each party in developing the initial service plan, reviewing the plan each quarter, and revising the plan when necessary shall be included in the resident's record.

Article 10. Quarterly Progress Reports.

§ 5.22. [Quarterly progress reports.]

For all facilities except secure detention facilities written progress reports shall be completed [no later than 90 days from the date of admission and] at least quarterly [~~and~~ thereafter. The report] shall be included in each resident's record.

§ 5.23. Quarterly progress report format.

A. The facility shall develop a format for quarterly progress reports which is designed to provide information on the:

1. Resident's progress toward the [goals] established [goals in the service plan] ,
2. Family's involvement,
3. Continuing needs of the resident,
4. Progress towards discharge, [and]

5. Status of discharge planning [, and

6. Revisions, if any, to the service plan.]

B. The facility's format shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

C. Each report shall follow the facility's approved format.

[Article 11.

*Transfer of Residents Between Residential Facilities
Located in Virginia which are Operated by the
Same Sponsor.*

§ 5.24. Transfer of resident.

Except when transfer is ordered by order of a court of competent jurisdiction, at the time of transfer the receiving facility shall document:

1. A preplacement visit by the resident;
2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission;
3. Written confirmation of the admission decision to the legal guardian and to the placing agency;
4. Receipt from the sending facility of a written summary of the child's progress while at the facility and the resident's current strengths and needs; and
5. Receipt of the child's record.

§ 5.25. Retention of records.

The sending facility shall retain a copy of the information required in § 2.35.]

Article [~~11~~. 12.]
Discharge.

[§ ~~5.24~~. § 5.26. Development of written criteria for discharge.]

The facility shall have written criteria for termination of care that shall include:

1. Criteria for a resident's completion of the program which are consistent with facility's programs and services; and
2. Conditions under which a resident may be discharged before completing the program.

[§ 5.27. Accessibility of discharge criteria.

The facility's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

§ 5.28. Court order.

The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.]

[§ ~~5.25~~. § 5.29. Respite care.]

If a facility is specifically approved to provide residential respite care a resident shall be discharged when the legal guardian(s) no longer intend to use the facility's services.

[§ ~~5.26~~. § 5.30. Resident's record.]

Except when discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date each resident's record shall contain the following:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child placing agency, and resident; and
2. A written discharge plan which follows the facility's approved format.

[§ ~~5.27~~. § 5.31. Continuing care.]

Information important to the resident's continuing care shall be made available or provided to the legal guardian or legally authorized representative, as appropriate.

[§ ~~5.28~~. § 5.32. Release to legal guardian or authorized representative.]

Residents shall be discharged only to the legal guardian or legally authorized representative.

[§ ~~5.29~~. Discharge plan format.

A. The facility shall develop a format for discharge plans except this section shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. The record of each person discharged by such facility shall contain a copy of the court order.

B. The facility's format for discharge plans shall be reviewed and approved by the regulatory authority prior to initial use.

§ 5.30. Discharge sheet.

A. The facility shall develop a discharge sheet which contains information essential to responding to inquiries about the former resident.

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B. The facility's discharge sheet shall be reviewed and approved by the regulatory authority prior to initial use.

C. A completed discharge sheet, which follows the facility's approved format, shall be placed in the resident's record within 10 days after discharge.]

[~~§ 5.31.~~ § 5.33.] Discharge summary format.

A. This section shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. The record of each resident discharged by such facility shall contain a copy of the court order.

B. The facility shall develop a format for comprehensive discharge summaries which is designed to outline the:

1. Services provided to the resident,
2. Resident's progress,
3. Resident's continuing needs [;] and [recommendations, if any, for further services and care,]
4. Reason(s) for discharge [; and name(s) of person(s) to whom resident was discharged, and
5. Dates of admission and discharge.]

C. The facility's comprehensive discharge summary format shall be reviewed and approved by the regulatory authority prior to initial use [and any subsequent revisions] .

D. A comprehensive discharge summary, which follows the facility's approved format, shall be placed in the resident's record [and sent to the person(s) or agency which made the placement] no later than 30 days after discharge.

Article [~~12.~~ 13.]

Placement of Residents Outside the Facility.

[~~§ 5.32.~~ § 5.34. Placement outside facility.]

A resident shall not be placed outside the facility prior to the facility's obtaining a child placing agency license from the Department of Social Services except as permitted by statute or by order of a court of competent jurisdiction.

[~~§ 5.33.~~] The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan: [~~Repealed.~~]

1. The resident;
2. The resident's family or legally authorized representative;

3. The placing agency; and

4. Facility staff.

[~~§ 5.34.~~] The degree of participation, or lack thereof, of each of the parties listed in ~~§ 5.33~~ in developing the service plan shall be documented in the resident's record. [~~Repealed.~~]

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following: ~~Repealed.~~

1. A statement of the resident's current level of functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;
2. A statement of goals and objectives meeting the above identified needs;
3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;
4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;
5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;
6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and
7. The estimated length of the resident's stay.

Article ~~13.~~

Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each resident's record and shall include: ~~Repealed.~~

1. Reports of significant incidents, both positive and negative;
2. Reports of visits with the family;
3. Changes in the resident's family situation;
4. Progress made toward the goals and objectives described in the Service Plan required by ~~§ 5.32~~;
5. School reports;
6. Behavioral problems in the facility and the community;

7. Summary of the resident's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;

8. Reevaluation of the placement including tentative discharge plans.

Article 14. Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate, unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the resident's current level of functioning and needs: *Repealed.*

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the resident's record except that this section does not apply to secure detention facilities: *Repealed.*

§ 5.39. Staff responsible for the daily implementation of the resident's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual residents except that this section does not apply to secure detention facilities: *Repealed.*

§ 5.40. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities: *Repealed.*

Article 15. Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each resident admitted to a temporary care facility and placed in the resident's master file within 72 hours of admission: *Repealed.*

§ 5.42. The individualized service plan shall include: *Repealed.*

1. The resident's description of his situation/problem;
2. Documentation of contact with the resident's parent or legal guardian to obtain his description of the

resident's situation/problem;

3. The facility staff's assessment of the resident's situation/problem;

4. A plan of action including:

- a. Services to be provided;
- b. Activities to be provided;
- c. Who is to provide services and activities; and
- d. When services and activities are to be provided;

5. The anticipated date of discharge; and

6. An assessment of the resident's continuing need for services.

Article [16: 14.] Counseling and Social Services.

§ 5.43. [*Counseling and social services.*]

For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family in maintaining their relationships and planning for the future care of the resident;

3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;

4. Helping the resident with problems affecting the ability to have satisfying personal relationships and use of the capacity for growth;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for return home, for independent living, or for other residential care.

§ 5.44. [*Documentation.*]

The provision of counseling and social services shall be documented in each resident's record except that this

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section does not apply to secure detention facilities.

§ 5.45. [*Staff.*]

For all facilities, except secure detention facilities, counseling and other social services consistent with the goals of the service plan shall be provided to meet the specific needs of each resident in one of the following ways:

1. By a qualified staff member;
2. By service staff of the agency that placed the resident provided such staff is available on an as needed basis rather than on a limited basis (e.g., quarterly or semiannually);
3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or
4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community based group.

Article [~~17~~. 15.]
Residential Services.

§ 5.46. [*Residential services.*]

There shall be evidence of a structured program of care that is designed to:

1. Meet the resident's physical needs;
2. Provide protection, guidance and supervision;
3. Promote a sense of security and self-worth; and
4. Meet the objectives of any required service plan.

§ 5.47. [*Daily routine.*]

There shall be evidence of a structured daily routine that is designed to assure the delivery of program services.

§ 5.48. [*Activity log.*]

A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by residents including health and dental complaints or injuries.

§ 5.49. [*Entries in log to be signed or initialed.*]

Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. [*Sleep and rest.*]

Routines shall be planned to assure that each resident shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. [*Hygiene.*]

Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the residents.

Article [~~18~~. 16.]
Health Care Procedures.

§ 5.52. [*Health care procedures.*]

Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;
2. Routine ongoing and follow-up medical and dental services after admission; and
3. Emergency services for each resident as provided by statute or by agreement with the resident's legal guardian.

§ 5.53. [*Medical and dental emergencies.*]

[A. For all facilities except temporary care facilities ~~written~~ *Written*] information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;
4. Information concerning:
 - a. Use of medication,
 - b. Medication allergies,
 - c. Any history of substance abuse except that this requirement does not apply to secure detention, and
 - d. significant medical problems; and
5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining

consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

[*B. Temporary care facilities shall make and document prompt efforts to obtain the medical and dental information required in subsection A of this section.*]

§ 5.54. [*Respite care.*]

Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

Article [~~19.~~ 17.] Physical Examinations.

§ 5.55. [*Initial examination.*]

Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. [*Annual examination.*]

Following the initial examination, each resident shall have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. [*Additional examinations.*]

In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or
2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. [*Examination report.*]

Each physical examination report shall be included in the resident's record.

[§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;

2. Visual acuity ;

3. Auditory acuity;

4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

5. Allergies, chronic conditions, and handicaps, if any;

6. Nutritional requirements, including special diets, if any;

7. Restriction of physical activities, if any;

8. Recommendations for further treatment, immunizations, and other examinations indicated;

9. The date of the physical examination; and

10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.59. *Content of examination report.*

Each physical examination report shall include:

1. Information necessary to determine the health needs of the resident;
2. Date of the physical examination; and
3. Signature of a licensed physician, the physician's designee, or an official of a local health department.]

§ 5.60. [*Admission of child with communicable disease.*]

In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the child and procedures to protect residents and staff.

§ 5.61. [*Follow-up medical observation.*]

Recommendations for follow-up medical observation and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. [*Documentation.*]

Except for (i) secure detention facilities, (ii) temporary

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care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and
2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each resident.

§ 5.63. [*Health complaints.*]

Each resident's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

§ 5.64. [*Mental health record.*]

Each resident's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. [*Isolation of resident with communicable disease.*]

Provision shall be made for suitable isolation of any resident suspected of having a communicable disease.

§ 5.66. [*First-aid kit.*]

A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

Article [~~20~~. 18.]
Medication.

§ 5.67. [*Security.*]

All medication shall be securely locked and properly labeled.

§ 5.68. [*Delivery.*]

Medication shall be delivered only by staff authorized by the director to do so.

§ 5.69. [*Side effects.*]

Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. [*Program of medication.*]

A program of medication shall be instituted for a specific resident only when prescribed in writing by a licensed physician.

§ 5.71. [*Controlled substances.*]

Medications that are classified as "controlled substances" as defined in § 54.1-3401 of the Code of Virginia shall only be obtained from a licensed physician or from a licensed

pharmacist upon individual prescription of a licensed physician.

§ 5.72. [*Daily log.*]

A daily log shall be maintained of all medicines received by the individual resident.

§ 5.73. [*Drug reactions or medication errors.*]

The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. [*Poison control center.*]

The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. [*Syrup of Ipecac.*]

At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

Article [~~21~~. 19.]
Nutrition.

§ 5.76. Provisions shall be made for each resident to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept on file for at least six months.

§ 5.80. The daily diet for residents shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the residents.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the resident shall be observed.

§ 5.84. Staff who eat in the presence of the residents shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the evening meal and breakfast the following day.

Article [~~22~~. 20.]

Management of Resident Behavior.

§ 5.86. [*Written policies and procedures required.*]

The facility shall have written policies and procedures governing management of resident behavior. Rules of conduct, if any, shall be included in the written policies and procedures.

§ 5.87. [*Procedures for documentation and monitoring required.*]

The facility shall have written procedures for documenting and monitoring management of resident behavior.

§ 5.88. [*Providing policies and procedures to residents, guardians and referral agencies.*]

Written information concerning management of resident behavior shall be provided to prospective residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information; legal guardian(s); and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided:

1. To residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, within 12 hours following admission,
2. To referral agencies within 72 hours following the resident's admission, and
3. To legal guardians within 72 hours following the resident's admission except that this requirement shall not apply:

- a. To secure detention facilities;
- b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and
- c. When a state mental hospital is evaluating a child's treatment needs as provided by § 16.1-275 of the Code of Virginia.

§ 5.89. [*Substantive changes to policies.*]

When substantive revisions are made to policies governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, and referral agencies, and

2. Legal guardians except that this requirement shall not apply:

- a. To secure detention facilities;
- b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and
- c. When a state mental hospital is evaluating a child's treatment needs as provided in § 16.1-275 of the Code of Virginia.

§ 5.90. Only trained staff members may manage resident behavior.

Article [~~23~~. 21.] Confinement.

§ 5.91. When a resident is confined, the room shall not be locked nor the door secured in any manner that prevents the resident from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.92. Any resident confined shall be able to communicate with staff.

§ 5.93. There shall be a staff check on the room at least every 30 minutes.

§ 5.94. The use of confinement shall be documented when confinement is used as a technique for managing resident behavior.

Article [~~24~~. 22.] Prohibitions.

§ 5.95. [*Prohibited actions.*]

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
2. Limitation on contacts and visits with attorney, probation officer, regulatory personnel or placing agency representative;
3. Bans on contacts and visits with family or legal guardian(s) except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and

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federal regulations or by order of a court of competent jurisdiction;

5. Any action which is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care including counseling;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli except as permitted as part of an intrusive aversive therapy plan approved pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and advocates employed by the Department for Rights of Virginians With Disabilities to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.

Article [~~25~~. 23.]
Chemical or Mechanical Restraints.

§ 5.96. [*Mechanical restraints.*]

The use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

§ 5.97. [*Chemical restraints.*]

The use of chemical restraints is prohibited.

Article [~~26~~. 24.]
Physical Restraint.

§ 5.98. [*When to use physical restraint.*]

Only after less intrusive interventions have failed or when failure to restrain a resident would result in harm to the resident or others, trained staff members may physically restrain a resident.

§ 5.99. [*Limitation on use of physical restraint.*]

The use of physical restraint shall be only that which is minimally necessary to protect the resident or others.

§ 5.100. [*Policies governing use of physical restraint required.*]

The facility shall have written policies and procedures governing the use of physical restraint.

§ 5.101. [*When to take other appropriate measures.*]

The facility's procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

§ 5.102. [*Documentation of use of physical restraint.*]

Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;
2. Time;
3. Staff involved;
4. Circumstances;
5. Reason(s) for use of physical restraint;
6. Duration;
7. Method(s) of physical restraint used; and
8. Less intrusive interventions which were unsuccessfully attempted prior to using physical restraint.

§ 5.103. [*Orientation of staff members on physical restraint procedures.*]

Each staff member responsible for supervision of children shall receive basic orientation to the facility's physical restraint procedures and techniques and to less intrusive interventions:

1. Within seven days of employment, and
2. Prior to assuming sole responsibility for the supervision of one or more residents.

Article [~~27~~. 25.]

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Seclusion.

§ 5.104. [*Seclusion.*]

Seclusion is allowed only as permitted by other applicable state regulations.

Article [~~28~~. 26.] Timeout.

§ 5.105. [*Timeout*]

Timeout is allowed only as permitted by other applicable state regulations.

§ 5.106. Repealed.

§ 5.107. Repealed.

Article [~~29~~. 27.] Education.

§ 5.108. [*Enrollment in educational program.*]

Each resident of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. [*Guidance and counseling.*]

The facility shall provide educational guidance and counseling for each resident in selection of courses and shall ensure that education is an integral part of the resident's total program.

§ 5.110. [*Program for handicapped children.*]

Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

§ 5.111. [*Compliance with state and federal requirements.*]

When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. [*Programs not certified or approved by the Department of Education.*]

When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

Article [~~30~~. 28.] Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the residents to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the resident and any individual or agency considering the placement of a child in the facility.

§ 5.115. Residents shall not be coerced to participate in religious activities.

Article [~~31~~. 29.] Recreation.

§ 5.116. [*Written description of program.*]

There shall be a written description of the recreation program for the facility showing activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents and which includes:

1. Opportunities for individual and group activities;
2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program;
3. Except in secure detention facilities, use of available community recreational resources and facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of losing, etc.).

§ 5.117. [*Supervision.*]

The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific activities.

§ 5.118. [*Coeducational activities.*]

Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the residents.

Article [~~32~~. 30.] Community Relationships.

§ 5.119. [*Participation in community activities.*]

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Opportunities shall be provided for the residents in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. [*Evaluation of community interest.*]

Community interest in residents and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the residents.

Article [~~33~~. 31.] Clothing.

§ 5.121. [*Clothing supply.*]

Provisions shall be made for each resident to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. [*Style.*]

Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. [*Selection.*]

Residents shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. [*Inspection.*]

Each resident's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. [*Resident to take personal clothing when discharged.*]

The resident shall be allowed to take personal clothing when the resident leaves the facility.

Article [34. 32.] Allowances and Spending Money.

§ 5.126. [*Teaching value and use of money.*]

The facility shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. [*Allowances policy.*]

There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. [*Availability of allowances policy.*]

The written policy regarding allowances shall be made available to legal guardians at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. [*Safekeeping and record keeping of money.*]

The facility shall provide for safekeeping and for record keeping of any money that belongs to residents.

Article [~~35~~. 33.] Work and Employment.

§ 5.130. [*Assignment of chores.*]

Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

§ 5.131. [*Chores; limitations.*]

Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. [*Employment outside facility.*]

Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the legal guardian except that this section does not apply to secure detention facilities.

§ 5.133. [*Wages.*]

The facility shall ensure that any resident employed inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a resident shall accrue to the sole benefit of that resident.

Article [~~36~~. 34.] Visitation at the Facility and to the Resident's Home.

§ 5.135. [*Visitation policies.*]

The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges and flexible visiting hours.

§ 5.136. [*Availability of visitation policies.*]

Copies of the written visitation policies and procedures shall be made available to the parents, legal guardians, the resident, and other interested persons important to the

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resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

Article [37: 35.] Use of Vehicles and Power Equipment.

§ 5.137. [*Transportation requirements.*]

Any transportation provided for or used by children shall be in compliance with state, federal or international laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles; and
3. Licensure of drivers.

§ 5.138. [*Safety rules for transportation.*]

There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. [*Safety rules; vehicles and power equipment.*]

There shall be written safety rules for the use and maintenance of vehicles and power equipment.

Article [38: 36.] Reports to Court.

§ 5.140. [*Filing of foster care plans.*]

When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virginia) submitted to the court shall be filed in the resident's record except that this section does not apply to secure detention facilities.

Article [39: 37.] Emergency Reports.

§ 5.141. [*Types of emergencies.*]

Any serious incident, accident or injury to the resident ; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported to the parent/legal guardian/placing agency within 24 hours.

§ 5.142. [*Content of record.*]

The resident's record shall contain:

1. The date and time the incident occurred;
2. A brief description of the incident;

3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the parent/legal guardian or placing agency; and
6. The name of the person to whom the report was made.

Article [40: 38.] Suspected Child Abuse or Neglect.

§ 5.143. [*Reporting suspected abuse or neglect.*]

Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. [*Content of record.*]

The resident's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident;
3. Action taken as a result of the incident; and
4. Name of the person to whom the report was made at the local department.

PART VI. DISASTER OR EMERGENCY PLANS.

Article 1. Procedures for Meeting Emergencies.

§ 6.1. [*Emergency procedures.*]

[~~A. Established~~] Written procedures shall be [~~made known to all staff and residents, as appropriate for health and safety, developed~~] for use in meeting specific emergencies including:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation including alternate housing.

[~~B. Emergency procedures shall address the handling of residents with special needs.~~

C. Each new staff member shall be trained in

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procedures for handling residents with special needs in emergencies within seven days after employment.

D. Each new staff member shall be trained in procedures for handling residents with special needs in emergencies prior to assuming sole responsibility for the supervision of one or more children.

D. Emergency procedures shall be made known to each resident, as appropriate.]

Article 2. Written Fire Plan.

§ 6.2. [*Written fire plan required.]*

Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. [*Staff responsibilities.]*

Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of children with special needs, and checking to ensure complete evacuation of the building(s);
3. A system for alerting fire fighting authorities;
4. Use, maintenance and operation of fire fighting and fire warning equipment;
5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;
6. Posting of floor plans showing primary and secondary means of egress; and
7. Other special procedures developed with the local fire authority.

§ 6.4. [*Posting of floor plans.]*

Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. [*Review of fire plan.]*

The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.

§ 6.6. [*Notification of staff and residents.]*

The procedures and responsibilities reflected in the

written fire plan shall be made known to all staff and residents.

Article 3.

Posting of Fire Emergency Phone Number.

§ 6.7. [*Posting of fire emergency phone numbers.]*

The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

Article 4.

Portable Fire Extinguishers.

§ 6.8. [*Installation.]*

Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. [*Accessibility.]*

Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 40 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. [*Maintenance.]*

All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. [*Inspection.]*

Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. [*Professional maintenance check.]*

Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

Article 5. Smoke Alarms.

§ 6.13. [*Installation.*]

Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and properly installed smoke detector:

1. In each bedroom hallway;
2. At the top of each interior stairway;
3. In each area designated for smoking;
4. In or immediately adjacent to each room with a furnace or other heat source; and
5. In each additional location directed by the local building official, the local fire authority, or the state fire authority.

§ 6.14. [*Maintenance.*]

Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. [*Single station smoke detectors.*]

If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. [*Automatic fire alarm.*]

If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Article 6. Fire Drills.

§ 6.17. [*Frequency of drills in each building.*]

At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by residents.

§ 6.18. [*Minimum requirements.*]

Fire drills shall include, as a minimum:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures;
3. Practice in alerting fire fighting authorities;
4. Simulated use of fire fighting equipment;
5. Practice in fire containment procedures; and
6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. [*Frequency of drills during each shift.*]

During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. [*False alarms.*]

False alarms shall not be counted as fire drills.

§ 6.21. [*Staff responsible for conducting drills.*]

The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. [*Maintenance of records.*]

A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;
2. Date of drill;
3. Time of drill;
4. Amount of time to evacuate building;
5. Specific problems encountered;
6. Staff tasks completed:
 - a. Doors and windows closed,
 - b. Head count,
 - c. Practice in notifying fire authority, and
 - d. Other;
7. Summary; and
8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. [*Retention of records.*]

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The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. [*Staff responsible for fire drill program.*]

The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the facility's written fire plan;
2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;
3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and
4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

Article 7.

Staff Training in Fire Procedures.

§ 6.25. [*Training required within seven days of employment.*]

Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. [*Training required before supervising children.*]

Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

[Article 8.

"Sighted Guide" Training for Emergency Use.]

§ 6.27. ~~When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities. Repealed.~~]

§ 6.28. [~~"Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities. Repealed.~~]

VA.R. Doc. No. R94-697; Filed March 15, 1994, 3:58 p.m.

BOARD OF GAME AND INLAND FISHERIES

Title of Regulation: VR 325-05-1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 29.1-103 of the Code of Virginia.

Effective Date: May 4, 1994.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 Session of the General Assembly. These amendments establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These guidelines are consistent with those of the other regulatory agencies within the Natural Resources Secretariat.

The regulation contains a number of new provisions. Specifically, the regulation includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all persons commenting on the regulation at least five days before final adoption of the regulation.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Mark Monson, Chief, Administrative Services Division, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-2387. There may be a charge for copies.

VR 325-05-1. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Agency" means the Department of Game and Inland Fisheries.

"Approving authority" means the Board of Game and Inland Fisheries established pursuant to the Environmental Protection Law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Game and Inland Fisheries or his designee.

"Environmental Protection Law" means the provisions found in the Virginia statutory law authorizing the approving authority or agency or both to make regulations or containing procedural requirements thereof including, but not limited to, Title 29.1 of the Code of Virginia.

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

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

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

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

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

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

Unless specifically defined in the Environmental Protection Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

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

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

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

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

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

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the

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promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.

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

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

1. Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

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

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

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

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

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

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

g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after

it is published in The Virginia Register of Regulations.

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

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

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

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

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

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

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

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

2. A request for comments on the costs and benefits

of the proposal.

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

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

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

b. A statement of estimated impact:

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

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

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

(4) The beneficial impact the regulation is designed to produce.

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

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

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

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

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it

for effectiveness and continued need.

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

I. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register of Regulations.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

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

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

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

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

§ 4. Transition.

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A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to [~~the effective date of this regulation~~ May 4, 1994,] shall be processed in accordance with the agency's emergency Public Participation Guidelines (VR 325-05-1) which are effective from June 18, 1993, until June 17, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This regulation [~~when effective~~] shall supersede and repeal emergency regulation VR 325-05-1 Public Participation Guidelines which became effective on June 18, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to [~~the effective date of this regulation~~ May 4, 1994,] shall be processed in accordance with this regulation.

VA.R. Doc. No. R94-692; Filed March 15, 1994, 9:19 a.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: VR 390-01-01. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Effective Date: May 4, 1994.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These amendments establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These amendments are consistent with those of other agencies within the Natural Resources Secretariat.

The regulations contain a number of new provisions. Specifically, they include a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; require the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expand the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expand the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expand

the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and require that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Margaret T. Peters, Information Director, Board of Historic Resources, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-3143. There may be a charge for copies.

VR 390-01-01. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Board" means the Board of Historic Resources.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

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

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

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

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

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

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

B. Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

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

B. At the discretion of the board or the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

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

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

If the board determines not to act upon a petition, the board shall provide a written response to such petition within 180 days from receipt of the petition.

§ 3. Public participation procedures.

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

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

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the board specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from five persons during the associated comment period indicating that the department should use the participatory approach, the agency shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers

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the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

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

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

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

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

e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal .

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

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

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

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

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

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of The Virginia Register of Regulations , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

E. The department shall disseminate the NOIRA to the public via the following:

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

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

F. After consideration of public comment, the department may prepare complete the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established the participatory approach is being used , the draft regulation shall be developed in consultation with such group the participants . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group participants during the development of the draft regulation. A summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

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

H. The NOPC shall include the following:

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

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

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

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

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

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .

b. A statement of estimated impact:

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

(2) Projected cost , expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In

those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

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

(4) The beneficial impact the regulation is designed to produce.

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

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

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

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

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

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. ~~(In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. *In those cases where the department or board elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

I. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register of Regulations .

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations;

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

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

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

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

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

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register prior to February 10, 1993, [*the effective date of this regulation May 4, 1994,*] shall be processed in accordance with the emergency Public Participation Guidelines specified in Chapter 656 of the Acts of Assembly of 1989 VR 390-01-01 which are effective from June 25, 1993, until June 24, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. *This regulation [when effective] shall supersede and repeal the emergency regulation, VR 390-01-01 Public Participation Guidelines, which became effective on June 25, 1993.* All regulatory actions for which a NOIRA has not been published in The Virginia Register [*of Regulations*] prior to February 10, 1993, [*the effective date of this regulation May 4, 1994,*] shall be processed in accordance with this regulation (VR 390-01-01) .

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VA.R. Doc. No. R94-698; Filed March 16, 1994, 9:08 a.m.

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: VR 392-01-01. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code of Virginia.

Effective Date: May 4, 1994.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These amendments establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These amendments are consistent with those of other agencies within the Natural Resources Secretariat.

The amendments contain a number of new provisions. Specifically, they include a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; require the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expand the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expand the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expand the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and require that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Margaret Peters, Information Director, Department of Historic Resources, 221 Governor Street, Richmond, VA

23219, telephone (804) 786-3143. There may be a charge for copies.

VR 392-01-01. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

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

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

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

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

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

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

B. Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

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

B. At the discretion of the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

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

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

If the director determines not to act upon a petition, he shall provide a written response to such petition within 180 days from receipt of the petition.

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization, or

publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may periodically be requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization or at the discretion of the agency when mail is returned as undeliverable.

B. The department may commence the regulation adoption process upon its own initiative and proceed to draft a proposal according to these procedures.

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the director specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the director specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from five persons during the associated comment period indicating that the department should use the participatory approach, the agency shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

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

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

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

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

e. A request for comments on the intended regulatory action, to include any ideas to assist the

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department in the ~~drafting and formation~~ of any proposed regulation developed pursuant to the NOIRA development of any proposal .

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

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

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

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

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

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of *The Virginia Register of Regulations* , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in *The Virginia Register of Regulations*

E. The department shall disseminate the NOIRA to the public via the following:

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

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

F. After consideration of public comment, the department may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If an ~~ad hoc advisory group~~ has been established, ~~the participatory approach is being used~~ , the draft regulation shall be developed in consultation with ~~such group~~ the participants . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group~~ participants during the development of the draft regulation.

G. Upon approval of the draft proposed regulation by the director, the department shall publish the NOPC a *Notice of Public Comment (NOPC)* and the proposal for public comment.

H. The NOPC shall include the following:

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

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

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

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

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

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .

b. A statement of estimated impact:

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

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

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

(4) The beneficial impact the regulation is designed to produce.

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

d. An estimate of the impact of the proposed

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regulation upon small businesses as defined in § 9-199 of the Code of Virginia or upon other organizations in Virginia.

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

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

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

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. ~~(In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. *In those cases where the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register of Regulations.

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations;

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

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

K. The department shall prepare a summary of comments received in response to the NOPC and the

department's response to the comments received. *The department shall send a draft of the summary of comments to all commenters on the proposed regulation at least five days before final adoption of the regulation.*

Both the summary and the comments shall become a part of the department file and after final action on the regulation by the director, made available, upon request, to interested persons.

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

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register prior to February 10, 1993; [~~the effective date of this regulation May 4, 1994,~~] shall be processed in accordance with the emergency Public Participation Guidelines specified in Chapter 656 of the Acts of Assembly of 1989 VR 392-01-01:1 which are effective from June 25, 1993, until June 24, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation [*when effective*] shall supersede and repeal the emergency regulation, VR 392-01-01:1 Public Participation Guidelines, which became effective on June 25, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register prior to February 10, 1993; [~~the effective date of this regulation May 4, 1994,~~] shall be processed in accordance with this regulation (VR 392-01-01) .

VA.R. Doc. No. R94-699; Filed March 16, 1994, 9:06 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: The Board of Housing and Community Development is suspending the regulatory process on § 2.3 B of the regulation entitled, "VR 394-01-2, Virginia Tradesmen Standards/1993." The regulatory process is being suspended beginning March 21, 1994, for at least 30 days to solicit additional public comment on this subsection. This regulation was published in final form in 10:10 VA.R. 2634-2643 February 7, 1994, to become effective April 1, 1994. The regulatory process is suspended only on the above-referenced subsection. The remainder of VR 394-01-2 will become effective on April 1, 1994. The regulation is reprinted below in its entirety to show the regulation as it will become effective April 1, 1994.

The portion of the regulation on which the regulatory process has been suspended reads as follows:

VR 394-01-2 - § 2.3 B

B. Applicants desiring to obtain certification for

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examination to be certified as a master shall furnish evidence that [they have one year of experience as a certified journeyman. ~~one of the following experience and education standards has been attained:~~

1. ~~Meet the requirements of § 2-3 A and have one additional year of supervisory experience; or~~

2. ~~Ten years of practical experience in the trade for which certification is desired.]~~

A public hearing on the above-referenced subsection will be held on April 18, 1994, at 7 p.m. in the General Assembly Building, House Room D, 910 Capitol Square, Richmond, Virginia 23219. Public comment may be submitted until April 25, 1994, to George Rickman, Regulatory Coordinator, Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, Virginia 23219-1321, telephone (804) 371-7170.

* * * * *

REPRINT

Title of Regulation: VR 394-01-2. Virginia Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990 /1993 .

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

Effective Date: April 1, 1994.

Summary:

The amendments put in place certification standards to be used for the certification of local fire and building maintenance inspectors, and for the certification of fire protection system designers and installers when they are required to be certified by local governments pursuant to other laws.

VR 394-01-2. Virginia Certification Standards/1993.

PART I. GENERAL.

§ 1.1. Definitions.

The terms used in these standards shall have the following meaning:

"Agent" means the person designated by the county, city, or town, according to local ordinance, to examine and determine an applicant's qualifications for certification.

"Agricultural blasting" means any blasting operation which is conducted on real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code

of Virginia, and no less than five acres in area.

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Voluntary Apprenticeship Act, § 40.1-120 of the Code of Virginia.

"Approved" means approved by the Department of Housing and Community Development.

"Blaster" or "shot firer" means the qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

"Board" means the Board of Housing and Community Development.

"Board of appeals" means the board established by a county, city or town, by local ordinance, to hear appeals concerning the application of [Part II and Part VIII of] these standards or from a decision of the local board or agent.

"Building official" means the executive official in charge of the local building department.

"Building-related mechanical worker" means a tradesman who does building-related mechanical work, including heating, air conditioning, and ventilation.

"Certified building official" means a person certified by the Council of American Building Officials as a certified building official.

"Code official" means the official who is charged with the administration and enforcement of Volume II of the Virginia Uniform Statewide Building Code.

["Contractor" means a person licensed according to § 54.1-1100 of the Code of Virginia who for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending the construction, removal, repair or improvement of any building or structure owned, controlled or leased by another person.]

"Department" means the Department of Housing and Community Development.

"Division" means a limited certification subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to the following: (i) plan and layout of detail for installation or modifications of electrical apparatus and controls, preparation of sketches showing location of wiring and equipment; (ii) measures, cuts, bends, threads, assembles and installs electrical conduits; (iii) performs maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need

for adjustments, relocation or replacement; (v) repairs faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including, but not limited to, installing, repairing and maintaining electrical systems and equipment.

"Fire Alarm System (FAS)" means a system and associated components which provide an indication or warning of fire, smoke or combustion in its incipient stages, or other conditions which affect the operation of the fire alarm system or other systems to which it is connected.

["Fire Alarm System (FAS) Certified Design Technician" means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FAS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.]

"Fire Alarm System (FAS) Certified Installer" means an individual who does the initial placement of equipment or the extension, modification, alteration, testing, inspection or maintenance of fire alarm equipment and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

"Fire official" means the designated person charged with the administration and enforcement of the Virginia Statewide Fire Prevention Code.

"Fire Protection Special Hazard System (FPSHS)" means for fire suppression purposes a nonwater based special hazard system of underground or overhead piping designed in accordance with fire protection engineering standards. Such systems include [,] but are not limited to [,] carbon dioxide systems, dry chemical systems, wet chemical systems, halon and other chemical or gaseous systems used for fire suppression purposes.

["Fire Protection Special Hazard System (FPSHS) Certified Design Technician" means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FPSHS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.]

"Fire Protection Special Hazard System (FPSHS) Certified Installer" means an individual who does the initial placement of the equipment or the extension, modification, alteration, testing, inspection or maintenance of fire protection special hazard systems and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

"Fire Protection Sprinkler System (FPSS)" means for

fire suppression purposes an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards. The installation includes one or more automatic water supplies with or without other agents. The portion of the sprinkler system above ground is a network of specially sized or hydraulically designed piping installed in a building, structure, or area generally overhead and to which sprinklers are attached in a systematic pattern.

["Fire Protection Sprinkler System (FPSS) Certified Design Technician" means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FPSS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.]

"Fire Protection Sprinkler System (FPSS) Certified Installer" means an individual who does the initial placement of the equipment or the extension, modification, alteration, testing, inspection or maintenance of fire protection sprinkler systems and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools, or other similar training organizations.

"Gasfitter" means a tradesman who does gasfitting related work as a [~~subdivision~~ division] within the building-related mechanical or plumbing trades.

"Helper" or "laborer" means a person who assists a tradesman certified according to these standards.

"Inspector" means a person authorized by the building local official to perform the inspections required in the Virginia Uniform Statewide Building Code regulations adopted and promulgated by the Board of Housing and Community Development.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment, utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Local board" means the board established by a county, city or town, according to local ordinance, to examine and determine an applicant's qualifications for certification.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of

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installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Uniform Statewide Building Code.

[*“Professional code administrator” means a person certified by the Board of Housing and Community Development as a professional code administrator.*]

“Plumber” means a tradesman who does plumbing work.

“Plumbing work” means the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage facilities, the venting system and the public or private water-supply systems within or adjacent to any building or structure.

[*“Professional code administrator” means a person certified by the Board of Housing and Community Development as a professional code administrator.*]

“Supervision” means monitoring of the work in progress to assure that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

“Supervisor” means the certified master tradesman who has the responsibility to determine that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

“Technical assistant” means any person employed by, or under contract to, a Virginia governing body as an inspector for determining compliance with the ~~building, electrical, plumbing, mechanical or fire protection provisions regulations adopted and promulgated by the Board of Housing and Community Development, including plans examination ; of the Virginia Uniform Statewide Building Code .~~

“Testing organization” means an independent testing organization whose main function is to develop and administer examinations.

“Trade” means any of the following: plumbing, building-related mechanical or electrical work, and divisions within them.

“Tradesman” means a person who engages in or offers to engage in, for the general public [or] for compensation, any of the trades covered by these standards.

[*“Virginia Certified Building Official” means a professional code administrator, or a certified building official who has also passed an examination and been certified by the Board of Housing and Community Development.*]

§ 1.2. Authority.

A. The tradesmen standards are adopted under authority granted by [~~Chapter 4,~~] § 15.1-11.4 of the Code of Virginia for use by counties, cities, and towns to be used for the certification of plumbing, building-related mechanical and electrical workers. These standards are not intended to affect licensing by local governments under other provisions of the Code of Virginia.

B. The building official, *fire official, code official,* technical assistants, and amusement device inspectors standards are adopted under authority granted by [~~Chapter 6,~~] §§ 36-137(6) and 36-98.3 of the Code of Virginia for the certification of building officials, technical assistants and amusement device inspectors.

C. The certification standards for blasters are adopted under authority granted by [~~Chapter 9~~] of Title 27 § 27-97 of the Code of Virginia.

D. These standards were adopted by order of the Board of Housing and Community Development on [~~November December~~] 19, 1990 [~~15 13,~~] 1993 . This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development and is available for public inspection.

E. The 1990 1993 edition of these standards replaces previous editions. It shall become effective on [~~March April~~] 1, 1991 1994 . Persons already enrolled in a certification program shall remain subject to the edition in effect at the time of enrollment. Subsequent enrollment shall be subject to the pertinent provisions of the standards in effect at the time of such ~~action~~ enrollment .

F. The Department of Housing and Community Development shall be the administrative agency providing advisory interpretations concerning the application of these standards.

G. The Department of Housing and Community Development may utilize testing organizations that develop and administer examinations based on the current provisions of the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Amusement Device Regulations, and the model codes and standards referenced by those regulations including standards for plumbing, building-related mechanical and electrical work. The department may designate divisional examinations within these trades.

PART II. CERTIFICATION OF TRADESMAN STANDARDS.

§ 2.1. Exemption from certification.

A. Plumbers, plumber-gasfitters, building-related mechanical workers, building-related mechanical gas-fitters

or electricians who were certified or licensed prior to July 1, 1978, in accordance with the certification or [~~license~~ *licensing*] provisions of the Commonwealth or any local government, shall be exempt from any further local certification requirement for the same trade.

B. Helpers or laborers who assist certified tradesmen shall be exempt.

C. Any person [~~that who~~] performs plumbing, plumbing gas-fitting, building-related mechanical gas-fitting, building-related mechanical, or electrical work ~~on their own property rather than~~ *not* for the general public ~~or~~ for compensation shall be exempt from local certification.

D. Any person who installs television or telephone cables, or lightning arrestor systems shall be exempt from certification as an electrician. Installers of wood stove equipment, masonry or prefabricated chimneys, or duct systems shall be exempt from certification as a building-related mechanical worker.

§ 2.2. Temporary certification.

A. Upon initial adoption of the Tradesmen Certification Standards, a locality shall be entitled to issue temporary journeymen and master tradesmen certificates to applicants that furnish evidence documenting their competence to perform work at their desired level of certification.

B. Temporary journeymen and master tradesmen certificates shall be effective for a period of six months from the date of issuance. Localities may extend a temporary tradesmen certificate for no longer than one additional six-month period, if the locality determines that the certificate holder is making an effort towards certification or special circumstances exist, or both.

C. Temporary journeymen and master tradesmen certificates shall be valid only in the jurisdiction of the issuing locality.

D. A temporary journeymen or master tradesmen certificate shall entitle the certificate holder to take the corresponding journeymen or master tradesmen certification examination.

E. Should the holder of a temporary journeymen or master tradesmen certificate fail to pass the appropriate certification examination by the expiration date of their temporary certificate, the individual shall be subject to the requirements of § 2.3 of these standards.

§ 2.3. Evidence of ability and proficiency.

A. Applicants for examination *to be certified* as a journeyman shall furnish evidence that one of the following experience and education standards ~~have~~ *has* been attained:

1. Four years of practical experience in the trade, and 240 hours of formal vocational training in the trade; however, experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours; or

2. Successful completion of a registered apprenticeship program established in accordance with the Virginia Voluntary Apprenticeship Act; or

[~~3. An Associate Degree in a curriculum related to the trade for which certification is desired and two~~ *(2) years of practical experience in the trade for which certification is desired; or*]

~~3.~~ [~~4. 3.~~] A Bachelor's Degree in an engineering curriculum related to the trade for which certification is desired, and one year of practical experience in the trade for which certification is desired; or

~~4.~~ [~~5. 4. Seven Ten~~] years of practical experience in the trade for which certification is desired.

B. Applicants ~~desiring to obtain certification for examination to be certified~~ as a master shall furnish evidence that they have one year of experience as a certified journeyman.

C. Individuals who have successfully passed the Class A contractors ~~exam~~ *examination* prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with these standards.

§ 2.4. Application and issuance of certificates.

A. An applicant must successfully complete an examination to be issued a card and deemed certified.

B. The local ~~agent or~~ *board or agent* shall receive and review applications and forward applications to the national testing organizations designated by the department.

C. The applicant shall present to the local ~~agent or~~ *board or agent* evidence of successful completion of an examination based on the current edition of the Virginia *Uniform* Statewide Building Code.

D. The local ~~agent or~~ *board or agent* shall issue certificates provided by the department to applicants successfully completing the examination.

E. Apprentices that completed a program prior to July 1, 1981, shall make application for certification with a locality; apprentices completing programs after July 1, 1981, shall make application with the Department of Labor and Industry, Apprenticeship Division.

§ 2.5. Revocation of certification.

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A. Certification may be revoked for misrepresentation or a fraudulent application, or for incompetence as demonstrated by an egregious or repeated violations of the Virginia Uniform Statewide Building Code.

B. The Department of Housing and Community Development shall be notified by the local board or agent when a certification has been revoked in accordance with provisions of these standards.

§ 2.6. ~~Reciprocity~~ *Other recognized programs* .

Individuals certified as a journeyman or master by governing bodies located outside the Commonwealth of Virginia shall be considered to be in compliance with these standards, if the Department of Housing and Community Development has determined the certifying system to be equivalent to the Virginia system.

[§ 2.7. Appeals.

A. Each local governing body shall establish a board of appeals. The local board of appeals shall consist of not less than five members appointed by the local government. Members shall be selected on the basis of their ability to render fair and competent decisions. Employees or officials of the local government appointing the board of appeals shall not serve as members. The agent shall designate an employee to serve as secretary to the board of appeals, who shall keep a detailed record of all proceedings. The board of appeals shall hear appeals concerning the application of these standards or from a decision of the local agent or certification board. Application for appeals shall be in writing and made within 90 days of receipt of the decision of the [*agency agent*] or certification board. The appeals board must meet within 20 working days of the filing of an appeal. All hearings shall be *open to the public*] ~~and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14.1 of the Code of Virginia .~~

[B. Any person aggrieved by a decision of a local board of appeals may appeal to the State Building Code Technical Review Board in accordance with § ~~117.0~~ 116.0 of the Uniform Statewide Building Code, Volume I.]

PART III. CERTIFICATION PROGRAM FOR BUILDING OFFICIALS AND ~~INSPECTORS~~ TECHNICAL ASSISTANTS .

§ 3.1. Exemption from certification.

A. An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction, or a change in area of inspection discipline.

B. An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

§ 3.2. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to Volume I of the Uniform Statewide Building Code (USBC).
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. The applicant shall complete ~~designated programs~~ *the core and applicable advanced modules* of the Virginia Building Code Academy.
4. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the ~~Professional Services Training and Certification Office~~.

§ 3.3. Maintenance of certification.

~~A. A certificate issued under the Virginia Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.~~

B. A. To maintain certification a certificate holder shall attend programs of instruction ~~approved as mandated~~ by the Department of Housing and Community Development and after each code change cycle of the Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (VFPC).

C. B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes ~~prior to the renewal date of their certification~~ .

§ 3.4. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining or renewing the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

[§ 3.5. Appeals.]

Any person aggrieved by a decision based upon these certification standards may appeal that decision, in writing, in accordance with the appeals process outlined in §§ 116.0 and 117.0 of the Virginia Uniform Statewide Building Code, Volume I.

[Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I.]

PART IV. BLASTER CERTIFICATION.

§ 4.1. Exemption from certification.

Individuals conducting agricultural blasting operations on their own property are not required to be certified as a blaster.

§ 4.2. Certification.

Certification shall be in the following two classifications:

1. Unrestricted blaster. A person classified as a certified unrestricted blaster shall be qualified to conduct appropriate blasting without limit as to size of shot or type of detonation devices. An applicant for unrestricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.

2. Restricted blaster. A person classified as a certified restricted blaster shall be qualified to conduct blasting operations involving five pounds of explosives or less per shot and use only instantaneous blasting caps. An applicant for restricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.

§ 4.3. Qualifications of candidates.

An applicant for a blaster's certification shall meet the following criteria:

1. Be at least 21 years of age;
2. Be able to understand and give written and oral instructions in the English language;
3. [a. For] unrestricted blaster certification [: ,] have worked at least one year under the direct supervision of a blaster certified by the Commonwealth of Virginia or another authority recognized by the Department of Housing and Community Development;

[b. For] restricted blaster certification [: ,] have worked at least one year under the direct supervision of an individual certified as an unrestricted blaster or as a restricted blaster by the Commonwealth of Virginia or another authority recognized by the Department of Housing and Community Development.

NOTE: In no case shall a certified restricted blaster's supervision be acceptable for an unrestricted blaster's experience requirements.

4. Have a working knowledge of federal, state, and local laws and regulations pertaining to explosive materials.

§ 4.4. Temporary certification.

A temporary certificate may be issued to any person who meets the applicant criteria listed in § 4.3. Any temporary certificate issued shall expire 12 months from the date of issuance. Temporary certifications shall not be renewed.

§ 4.5. Renewal.

A blasters certificate shall be renewed every three years from date of issuance. As a condition of renewal, proof of continued training or education in the use of explosives in an amount not less than 16 hours in three consecutive years shall be provided to the department. Requests for renewal shall be submitted on forms provided by the department.

§ 4.6. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this regulation if conditions of the certification have been violated, or if there has been any false statement or misrepresentation in the application on which the certification was based or for incompetence as demonstrated by flagrant and repeated violations of the VSFPC, or participating in three or more incidents within a five-year period resulting in property damage, [in] injury or death.

[§ 4.7. Appeals.

Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I.]

PART V. CERTIFICATION OF AMUSEMENT DEVICE INSPECTOR STANDARDS.

§ 5.1. Certification.

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A. To be eligible for certification, an applicant shall meet the following criteria:

1. The applicant shall have at least three years of experience in general building construction or any combination of education and experience which would confer equivalent knowledge and ability;
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A; and
3. The applicant shall submit an application for certification and a copy of examination results from the testing agency to the Professional Services Offices Training and Certification Office .

B. Notwithstanding any regulations to the contrary, no exemption shall be permitted from the requirements for certification for any person, including local building officials and their representatives, to inspect amusement devices.

§ 5.2. Maintenance of certification.

A. A certificate issued under the Virginia Amusement Device Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.

B. A. To maintain certification, a certificate holder shall attend programs of instruction approved as mandated by the Department of Housing and Community Development and after each code change cycle of the Virginia Amusement Device Regulations.

C. B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes prior to the renewal date of their certification .

§ 5.3. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this code if conditions of the certification have been violated, or if there [has have] been any false [statement statements] or [misrepresentation misrepresentations] in the application on which the certification was based.

[§ 5.4. Appeals.

Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I.]

PART VI.

CERTIFICATION PROGRAM FOR FIRE OFFICIALS AND TECHNICAL ASSISTANTS.

§ 6.1. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to the Virginia Statewide Fire Prevention Code (SFPC).
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. [The applicant shall complete the Fire Official Core of the Virginia Building Code Academy. a. The fire official shall complete a designated program of the Virginia Building and Fire Code Academy, developed in cooperation with the Department of Fire Programs and administered by the Department of Housing and Community Development.
- b. The technical assistants shall complete the "Fire Inspector II" course developed in cooperation with the Department of Housing and Community Development and administered by the Department of Fire Programs.]
4. The applicant shall submit an application for certification and a copy of examination results from the testing agency to the Training and Certification Office.

§ 6.2. Maintenance of certification.

A. To maintain certification a certificate holder shall attend programs of instruction as mandated by the Department of Housing and Community Development and after each code change cycle of the Virginia Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (SFPC).

B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes.

§ 6.3. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

§ 6.4. Appeals.

Any person aggrieved by a decision based upon [these

application of this] certification [~~standards~~ standard.] may appeal that decision, in writing, [directly to the State Building Code Technical Review Board] in accordance with the appeals process outlined in [§] § F-105.0 [~~and F-106.0~~] of the Virginia Statewide Fire Prevention Code.

PART VII. CERTIFICATION PROGRAM FOR CODE OFFICIALS AND TECHNICAL ASSISTANTS.

§ 7.1. Exemption from certification.

A. An individual employed as the code official in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the [fire code] official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

B. An individual employed as the technical assistant in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

§ 7.2. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to the Virginia Uniform Statewide Building Code, Volume II.
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. The applicant shall complete designated programs of the Virginia Building Code Academy.
4. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the Training and Certification Office.

§ 7.3. Maintenance of certification.

A. To maintain certification a certificate holder shall attend programs of instruction as mandated by the Department of Housing and Community Development and after each code change cycle of the Virginia Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (SFPC).

B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes.

§ 7.4. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

§ 7.5. Appeals.

Any person aggrieved by a decision based upon [these application of this] certification [~~standards~~ standard] may appeal that decision, in writing, [directly to the State Building Code Technical Review Board] in accordance with the appeals process outlined in § [~~F-~~] 106.0 of the Virginia Uniform Statewide Building Code, Volume II.

PART VIII. FIRE PROTECTION SYSTEM CERTIFICATION.

§ 8.1. Certification.

Designated individuals engaged in the [design and] installation of Fire Alarm Systems (FAS), Fire Protection Sprinkler Systems (FPSS), or Fire Protection Special Hazard Systems (FPSHS) shall become certified [within three years of the effective date of these standards by April 1, 1997] .

To be eligible for certification, an applicant shall meet the following criteria:

1. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
2. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the Training and Certification Office.

[§ 8.2. Maintenance of Certification.

A. All certified individuals shall maintain certification through continued validation as required by the approved testing agency.

B. To maintain certification, a certificate holder shall attend programs of instruction approved by the Department of Housing and Community Development after each code change cycle of the Uniform Statewide Building Code (USBC) and the Virginia Statewide Fire Prevention Code (SFPC).]

§ [~~8.2.~~ 8.2.] Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.
2. Gross negligence or continued incompetence in the

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practice of the profession.

§ [8.4. 8.3.] Appeals.

[Any person aggrieved by a decision based upon these certification standards may appeal that decision, in writing, in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I.

A. Each local governing body shall establish a board of appeals. The local board of appeals shall consist of not less than five members appointed by the local government. Members shall be selected on the basis of their ability to render fair and competent decisions. Employees or officials of the local government appointing the board of appeals shall not serve as members. The agent shall designate an employee to serve as secretary to the board of appeals, who shall keep a detailed record of all proceedings. The board of appeals shall hear appeals concerning the application of these standards or from a decision of the local agent or certification board. Application for appeals shall be in writing and made within 90 days of receipt of the decision of the agent or certification board. The appeals board must meet within 20 working days of the filing of an appeal. All hearings shall be open to the public.

B. Any person aggrieved by a decision of a local board of appeals may appeal to the State Building Code Technical Review Board in accordance with § 116.0 of the Uniform Statewide Building Code, Volume I.]

APPENDIX A. TESTING AGENCIES.

The following testing agencies have been approved by the Department of Housing and Community Development for administering the exams examinations. Other exams examinations may be approved on an individual basis. Requests for exam approval of examinations shall be submitted to the department.

Professional Code Administrator Certified Building Official

Information and registration forms may be obtained from:

NAI, Inc.
National Assessment Institute
2817 Parham Road
Richmond, VA 23294
(804) 747-3297

Council of American Building Officials (CABO)
5203 Leesburg Pike
Suite 708
Falls Church, VA 22041
(703) 931-4533

Inspection Inspector Certification Program

Information and registration forms may be obtained from:

Certification Training and Education Services
BOCA International
4051 West Flossmoor Road
Country Club Hills, IL 60477
(708) 799-2300

Educational Testing Service
(National Certification Program for Construction Code Inspectors)
CN 6508 [P.O. Box 6508]
Princeton, New Jersey 08541-6508
(609) 921-9000

National Association of Elevator Safety Authorities
P.O. Box 15643
Phoenix, Arizona 85060
(602) 266-9701

Amusement Device Inspector Program

Information and registration forms may be obtained from:

NAI, Inc.
National Assessment Institute
2817 Parham Road 9881 Mayland Drive, Suite 110
Richmond, VA 23294 23229
(804) 747-3297

Blaster Certification Program

Information and registration forms may be obtained from:

NAI, Inc.
National Assessment Institute
2817 Parham Road 9881 Mayland Drive, Suite 110
Richmond, VA 23294 23229
(804) 747-3297

Professional Code Administrator Certification Program

Information and registration forms may be obtained from:

Board of Housing and Community Development
501 North Second Street
Richmond, VA 23219
Attention: Training and Certification Office
(804) 371-7180

VA.R. Doc. No. R94-462; Filed January 11, 1994, 11:15 am.

* * * * *

REGISTRAR'S NOTICE: The Board of Housing and Community Development is suspending the regulatory process on Section F-3205.8 of the regulation entitled, "VR 394-01-6, Virginia Statewide Fire Prevention Code/1993." The regulatory process is being suspended beginning March 21, 1994, for at least 30 days to solicit additional

public comment on this section. This regulation was published in final form in 10:10 VA.R. 2654-2672 February 7, 1994, to become effective April 1, 1994. The regulatory process is suspended only on the above-referenced section. The remainder of VR 394-01-6 will become effective on April 1, 1994. The regulation is reprinted below in its entirety to show the regulation as it will become effective April 1, 1994.

The portion of the regulation on which the regulatory process has been suspended reads as follows:

VR 394-01-6 - Chapter 32, Flammable and Combustible Liquids - Section F-3205.8

[*B. Delete Section F-3205.8. Attendant.*]

A public hearing on the above-referenced section will be held on April 18, 1994, at 7 p.m. in the General Assembly Building, House Room D, 910 Capitol Square, Richmond, Virginia 23219. Public comment may be submitted until April 25, 1994, to George Rickman, Regulatory Coordinator, Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, Virginia 23219-1321, telephone (804) 371-7170.

* * * * *

REPRINT

Title of Regulation: **VR 394-01-6. Virginia Statewide Fire Prevention Code/ 1990 1993 .**

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

Effective Date: April 1, 1994.

Summary:

The amendments will update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Fire Prevention Code.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-6. Virginia Statewide Fire Prevention Code/1993.

**ARTICLE CHAPTER 1.
ADMINISTRATION AND ENFORCEMENT .**

SECTION F-100.0.

GENERAL.

F-100.1. Title. These regulations shall be known as the Virginia Statewide Fire Prevention Code [(SFPC)]. Except as otherwise indicated, SFPC or code shall mean the 1990 1993 edition of the Virginia Statewide Fire Prevention Code.

F-100.2. Authority. The SFPC is adopted according to regulatory authority granted the Board of Housing and Community Development (BHCD) by the Statewide Fire Prevention Code Act, Chapter 9, Title 27, §§ 27-94 through 27-101 of the Code of Virginia.

F-100.3. Adoption. The SFPC was adopted by order of the Board of Housing and Community Development on ~~January 28, 1991~~ [~~November 15~~ December 13], 1993 . This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development (DHCD), and is available for public inspection.

F-100.4. Effective date. The SFPC shall become effective on ~~April 15, 1991~~ [~~March~~ April] 1, 1994 .

F-100.5. Effect on other codes. The SFPC shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia. The SFPC shall supersede the fire prevention regulations previously adopted by local government or other political subdivisions. When any provision of this code is found to be in conflict with the Uniform Statewide Building Code (USBC) , OSHA, or applicable laws of the Commonwealth, that provision of the SFPC shall become invalid. Wherever the words "building code" appear, ~~it~~ they shall mean the building code in effect at the time of construction.

F-100.6. Purpose. The purpose of the SFPC is to provide statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located.

F-100.7. Application to post-Uniform Statewide Building Code (USBC) buildings. Egress facilities, fire protection, built-in fire protection equipment, and other fire safety features in such buildings shall be maintained in accordance with the requirements of the USBC in effect at the time the building or structure was constructed.

F-100.8. Application to pre-Uniform Statewide Building Code (USBC) buildings. Pre-USBC buildings are those buildings that were not subject to the USBC when constructed. Such buildings shall be maintained in accordance with the Virginia Public Building Safety Regulations (VR 394-01-05) which are hereby incorporated

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into this code by reference, and other applicable requirements of this code.

Note: The Virginia Public Building Safety Regulations (VR 394-01-05) [; which were formerly contained in Addendum 2 of this code,] are available from the [Professional Services Training and Certification] Office (DHCD), [205 North Fourth 501 North Second] Street, Richmond, VA [23219-1747 23219-1321].

F-100.9. Special provisions. The fire official shall require that buildings subject to the requirements of Section [~~100.0~~ 108.0] of the Uniform Statewide Building Code, Volume II - Building Maintenance Code, ~~1990~~ 1993 Edition, [shall] comply with the provisions of that section. [Exception: Family day homes as defined in § 63.1-195 of the Code of Virginia shall be exempt from this provision.]

F-100.10. Exemptions for farm structures. Farm structures not used for residential purposes shall be exempt from the provisions of the SFPC.

SECTION F-101.0.

REFERENCED STANDARDS AND AMENDMENTS.

F-101.1. Adoption of model code. The following model code, as amended by Sections F-101.2 and F-101.3, is hereby adopted and incorporated in the SFPC.

The BOCA National Fire Prevention Code/ ~~1990~~ 1993 Edition, published by: Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60477.

F-101.2. Administrative and enforcement amendments to the referenced model code. All requirements of the referenced model code and standards that relate to administrative and enforcement matters are deleted and replaced by ~~Article~~ Chapter 1 of the SFPC.

F-101.3. Other amendments to the referenced model code. The amendments noted in Addendum 1 shall be made to the specified articles and sections of the BOCA National Fire Prevention Code/ ~~1990~~ 1993 Edition.

F-101.4. Limitation of application of model code. No provision of the model code shall affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

SECTION F-102.0.

ENFORCEMENT AUTHORITY.

F-102.1. Enforcement. Any local government may enforce the SFPC after official action. The local governing body may assign responsibility for enforcement of the SFPC to the local agency or agencies of its choice. The State Fire Marshal shall have authority to enforce the SFPC in jurisdictions in which the local governments do not enforce the code. The State Fire Marshal's office shall be notified by the local government in writing when the fire official

has been appointed and shall provide a copy of the resolution or ordinance adopting the enforcement provisions of the SFPC. The terms "enforcing agency" and "fire official" apply to the agency or agencies responsible for enforcement. The terms "building official" or "building department" apply only to the local building official or building department.

F-102.1.1. Modifications. The fire official may grant modifications to any provisions of the Statewide Fire Prevention Code upon application of the owner or the owner's representative, provided that the spirit and intent of the code is observed and public health, welfare and safety are assured.

F-102.1.1.1. Records. The application for modification and the final decision of the fire official shall be in writing and shall be officially recorded.

F-102.2. Alternative methods and materials. The provisions of this code are not intended to prevent the use of any material or method of work not specifically prescribed by this code, provided that such alternative shall comply with the intent of the provisions of this code. The material, method or work offered shall be, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

F-102.2.1. Supporting data. The fire official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly. If it is determined that the evidence presented is satisfactory proof of performance for the use intended, the fire official shall approve the use of such alternative subject to the requirements of this code. Supporting data, when required by the fire official to assist in the approval of all materials or assemblies not specifically provided for in this code, shall consist of duly authenticated research reports from approved sources.

F-102.3. Qualifications and certification of fire officials and technical assistants . ~~The local government shall establish qualifications for the fire official and assistants. Fire officials and technical assistants shall meet the standards set forth in Sections F-102.3.1 and F-102.3.2.~~

F-102.3.1. Certification of fire official. The fire official shall be certified in accordance with the Virginia Certification Standards [(VR 394-01-2)] within three years after date of employment.

Exception: An individual employed as the fire official in a locality in Virginia prior to [the effective date of these regulations April 1, 1994,] shall be exempt from certification while employed as the fire official in that jurisdiction. This exemption shall not apply to subsequent employment as the fire official in another jurisdiction.

F-102.3.2. Certification of technical assistants. The technical assistants shall be certified in accordance with the Virginia

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Certification Standards [(VR 394-01-2)] within three years after date of employment.

Exceptions:

1. An individual employed as a technical assistant in a locality in Virginia prior to [the effective date of these regulations April 1, 1994,] shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exception shall not apply to subsequent employment as a technical assistant in another jurisdiction.

2. An employee not having responsibility for code enforcement under the Virginia Statewide Fire Prevention Code shall be exempt from certification. Code enforcement shall mean, at a minimum, those actions outlined in §§ [~~107.7~~ F-106.7] and [~~107.9~~ F-106.9] of the Virginia Statewide Fire Prevention Code.

Note: It is recommended that the fire official have at least five years of fire prevention experience. The certification programs offered by the Department of Housing and Community Development, Department of Fire Programs, and ETS/NFPA should be considered when establishing qualifications.

F-102.4. Maintenance inspections. The fire official may inspect all buildings, structures and premises to assure compliance with this code or any other ordinance affecting fire safety.

Exceptions:

1. Single family dwellings.
2. Dwelling units in multi-family dwellings.

F-102.5. Right of entry. The fire official may enter any structure or premises when there is reasonable cause to believe that an unsafe condition exists. Proper credentials shall be presented before entering occupied structures or premises. Legal assistance may be requested if entry is refused.

F-102.6. Coordinated inspections. The fire official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate with the local building department on those inspections required by the USBC, Volume I, for new construction, when involving provisions of the BOCA National Fire Prevention Code, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders. Whenever the fire official or an authorized representative observes an apparent or actual violation of the provisions of another law, ordinance or code, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

Note: Section ~~110.8~~ 110.8 of the USBC, Volume I, requires the building official to coordinate those inspections with the local fire official.

F-102.7. Records. The local fire official shall keep records of fires, inspections, notices, orders issued, and other matters as directed by the local government. Fire records shall include information as to the cause, origin and the extent of damage. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act [(§ 42.1-76 et seq.) of the Code of Virginia], (a) after 20 years in the case of arson fires, (b) after five years in nonarson fires, and (c) after three years in the case of all other reports, notices, and orders issued.

F-102.8. Relief from personal responsibility. The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as an employee. The fire official or his subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the SFPC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as an employee, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed in the discharge of the SFPC may be defended by the enforcing agency's legal representative. The State Fire Marshal or his subordinates shall not be personally liable for damages or costs sustained by any person when the State Fire Marshal or his subordinates are enforcing this code as part of their official duties under Section F-102.1.

F-102.9. Local regulations. Local governments may adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations are not more restrictive than the USBC and do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

F-102.10. Procedures or requirements. The local governing body may establish such procedures or requirements as may be necessary for the enforcement of the SFPC.

F-102.11. Control of conflict of interest. The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

SECTION F-103.0. DUTIES AND POWERS OF THE FIRE OFFICIAL.

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F-103.1. General. The fire official shall enforce the provisions of the SFPC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

F-103.2. Notices and orders. The fire official shall issue all necessary notices or orders to ensure compliance with the SFPC.

F-103.3. Delegation of duties and powers. The fire official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with this code.

SECTION F-104.0. PERMITS.

F-104.1. General. The fire official may require notification prior to activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; or [to] ~~conduct~~ *conducting* processes which produce conditions hazardous to life or property; or [to] ~~establish~~ *establishing* a place of assembly.

F-104.1.1. State permits. The State Fire Marshal will not issue permits under the SFPC except that annual permits shall be issued under ~~Article 26 Chapter 30~~ , Explosives, Ammunition and Blasting Agents.

F-104.1.2. Local permits. In those jurisdictions that enforce the SFPC, the Fire Official shall issue permits as required by ~~Article 26 Chapter 30~~ , Explosives, Ammunition and Blasting Agents.

F-104.2. Permits required. The local fire official may require permits to be obtained as specified in the model code. Permits shall be made available to the fire official upon request.

F-104.3. Application for permit. Application for a permit shall be made on forms prescribed by the local fire official.

F-104.4. Issuance of permits. Before a permit is issued, the local fire official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made ~~complies~~ *comply* with the provisions of this code.

F-104.5. Conditions of permit. A permit shall constitute permission to store or handle materials, or to conduct processes in accordance with the SFPC and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked, or for such period of time specified on the permit. Permits are not transferable.

F-104.6. Approved plans. Plans approved by the fire official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the

plans do not relieve the applicant of complying with all applicable requirements of this code.

F-104.7. Revocation of permit. The local fire official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

F-104.8. Suspension of permit. A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

F-104.9. Fees. Fees may be levied by the enforcing agency in order to defray the cost of enforcement and appeals. The fees listed in Table F-104.9 shall be levied on those permits issued in accordance with F-104.1.1.

Table F-104.9.

FEE SCHEDULE FOR EXPLOSIVES PERMITS ISSUED BY THE STATE FIRE MARSHAL

Type of Permit	Fee
To possess, store or dispose of explosives or blasting agents	\$50.00 per year
To use explosives or blasting agents	\$75.00 per year

SECTION F-105.0. LOCAL BOARD OF APPEALS.

F-105.1. Local board of appeals. Each local government shall have a local board of appeals as required by § 27-08 of the Code of Virginia, or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency, approved by the Department of Housing and Community Development to act on appeals.

F-105.2. Membership. The local board of appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of the local board members be staggered so that less than half of the terms expire in any one year.

F-105.3. Qualifications of board members. Board members shall be qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Employees or officials of the local government appointing the board shall not serve as board members.

F-105.4. Officers of the board. The board shall select one of its members to serve as chairman. The agency enforcing the SFPC shall designate an employee from its

agency to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings in accordance with Section F-102.6.

F-105.5. Alternates and absence of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

F-105.6. Control of conflict of interest. A member of the board shall not vote on any question involving their business or personal interests.

F-105.7. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

F-105.8. Application for appeal. The owner or occupant of any building, structure or premises may appeal a decision of the fire official, by submitting written application within 10 calendar days of the decision, when it is claimed that:

1. The fire official has refused to grant a modification of the provisions of the code;
2. The intent of the code has been incorrectly interpreted;
3. The provisions of the code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in the code has been denied.

F-105.9. Hearing open to public. All hearings shall be open to the public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14.1 of the Code of Virginia.

F-105.10. Postponement of hearing. When a quorum (over 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the fire official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

F-105.11. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the fire official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the fire official.

F-105.12. Enforcement of decision. The fire official shall take immediate action in accordance with the decision of the board.

F-105.1. General. Appeals concerning the application of the Statewide Fire Prevention Code (SFPC) by the local enforcing agency shall first lie to a local Board of Fire Prevention Code Appeals (BFPCA) established in accordance with this section. Appeals from the application of the [SFPC by the] State Fire Marshal shall be made directly to the State Building Code Technical Review Board (TRB). [Local governments without a BFPCA shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency, approved by the Department of Housing and Community Development to act on appeals.]

F-105.2. Membership of BFPCA. The BFPCA shall consist of at least five members appointed by the local government and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and [,] as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary [,] shall be maintained by the enforcing agency. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

F-105.2.1. Chairman. The BFPCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

F-105.2.2. Secretary. The local government shall appoint a secretary to the BFPCA to maintain a detailed record of all proceedings.

F-105.3. Qualifications of BFPCA members. BFPCA members shall be selected on the basis of their ability to render fair and competent decisions regarding application of the SFPC and shall to the extent possible, represent different occupational or professional fields relating to building construction or fire prevention. Employees or officials of the local government shall not serve as members of the BFPCA.

F-105.4. Disqualification of member. A member of the BFPCA shall not hear an appeal in which that member has any personal, professional, financial or any other conflict of interest.

F-105.5. Application for appeal. An owner or occupant of a building, structure or property may appeal a decision of a local enforcing agency concerning the application of the SFPC to that building, structure or property by submitting a written request for appeal to the enforcing agency within 14 calendar days from the receipt of the decisions to be appealed. A copy of the written decision of the enforcing agency upon which the appeal is being made shall be submitted by the applicant and retained as part of the record by the secretary of the BFPCA. In the case of an appeal of the decision of the State Fire Marshal,

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the applicant shall submit an application for appeal to the office of the TRB within 14 calendar days from the receipt of the decision to be appealed. A copy of the written decision of the State Fire Marshal upon which the appeal is being made shall also be submitted. The application for appeal shall be stamped or otherwise marked by the enforcing agency or the office of the TRB to indicate the date received. Failure to submit an application for appeal within the time limit established by this action shall constitute an acceptance of the enforcing agency or State Fire Marshal's decision.

F-105.6. BFPCA meeting. The BFPCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

F-105.7. Hearing procedures. All hearings before the BFPCA shall be open to the public. The applicant, the enforcing agency's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. Hearings from a decision of the State Fire Marshal to the TRB are governed by Article 2 [(§ 36-108 et seq.)] of Chapter 6 [(§ 36-107.1 et seq.)] of Title 36 of the Code of Virginia.

F-105.7.1. Postponement. When five members of the BFPCA are not present to hear an appeal, the applicant shall have the right to request a postponement of the hearing. The enforcing agency shall reschedule the appeal within 30 calendar days of the postponement.

F-105.8. Decision of BFPCA. The BFPCA shall have the power to reverse or modify the decision of the enforcing agency by a concurring vote of a majority of those present.

F-105.8.1. Resolution. The decision of the BFPCA shall be by resolution signed by the chairman and retained as part of the record by the enforcing agency. The following wording shall be part of the [decision resolution] :

"Upon receipt of this decision, any person who was a party to the appeal may appeal to the [TRB State Building Code Technical Review Board] by submitting an application to the State [Building Code Technical Review] Board within 21 calendar days. Application forms are available from the Office of the [State Building Code Technical] Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

F-105.9. Further appeal. After final determination by the BFPCA, any person who is a party to the local appeal may appeal to the TRB by submitting an application to the office of the TRB within 21 calendar days of receipt of the decision of the BFPCA. Failure to submit an

application for appeal within the time limit established by this section shall constitute acceptance of the enforcing agency's decision.

F-105.9.1. Information to be submitted. Copies of the decision of the enforcing agency and the resolution of the BFPCA which is being appealed shall be submitted with the application for appeal. Upon request by the office of the [Review Board TRB] , the enforcing agency shall submit a copy of all pertinent information from the record of the BFPCA.

F-105.10. Decision of TRB. Procedures of the TRB for both appeals from a decision of the State Fire Marshal and from the BFPCA are in accordance with Article 2 [(§ 36-108 et seq.)] of Chapter 6 [(§ 36-1.7.1 et seq.)] of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the enforcing agency or State Fire Marshal shall take action accordingly.

SECTION F-106.0: APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

F-106.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local Board of Appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 15 days of receipt of the decision of the local appeals board by the aggrieved party.

F-106.2. Appeal of decision of State Fire Marshal. Appeals concerning the application of the code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board.

F-106.3. Control of conflict of interests. A member of the board shall not vote on any question involving his business or personal interests.

F-106.4. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the fire official shall take immediate action in accordance with the decision.

F-106.5. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 (§ 9-6.14.15 et seq.) of Chapter 1.1.1 of Title 9 of the Code of Virginia.

SECTION F-107.0 F-106.0 . UNSAFE CONDITIONS.

F-107.1 F-106.1 . General. The fire official shall order the

following dangerous or hazardous conditions or materials to be removed or remedied in accordance with the SFPC:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof.
2. Conditions which would interfere with the efficiency and use of any fire protection equipment.
3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the fire department in case of fire.
4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.
5. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.
6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.
7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.
8. Hazardous conditions arising from defective or improperly used or installed equipment for handling or using combustible, explosive or otherwise hazardous materials.
9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.
10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

F-107.2 F-106.2 . Maintenance. The owner shall be responsible for the safe and proper maintenance of any building, structure, premises or lot. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarms, devices and safeguards required by the USBC shall be maintained in a safe and proper operating condition.

Note: Also see Sections **F-501.4 F-504.4** and **F-501.4.1 F-504.4.1** of this code for further information.

F-107.3 F-106.3 . Occupant responsibility. If an occupant of a building creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant shall be held responsible for the abatement of said hazardous conditions.

F-107.4 F-106.4 . Unsafe buildings. All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe buildings shall be reported to the building or maintenance code official who shall take appropriate action under the provisions of the USBC, Volume I - New Construction Code or Volume II - Building Maintenance Code, to secure abatement by repair and rehabilitation or by demolition.

F-107.5 F-106.5 . Evacuation. When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of the building, structure or premises. All notified occupants shall immediately leave the building, structure or premises, and no person shall enter until authorized to do so by the fire official.

F-107.6 F-106.6 . Unlawful continuance. It is deemed a violation of the SFPC for any person to refuse to leave, interfere with the evacuation of the other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition.

F-107.7 F-106.7 . Notice of violation. Whenever the fire official observes a violation of this code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of the violation describing the condition deemed unsafe, *citing the applicable code section* and specifying time limits for the required repairs or improvements to be made to render the building, structure or premises safe and secure. The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice of violation shall be served either by delivering a copy of same to such persons by mail to the last known post office address, by delivering it in person, by delivering it to and leaving it in the possession of any person in charge of the premises, or, in case such person is not found upon the premises, by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access; such procedure shall be deemed the equivalent of personal notice.

F-107.8 F-106.8 . Failure to correct violations. If the notice of violation is not complied with in the time specified by

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the fire official, the fire official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate any notice of violation which is not complied with in the specified time or require removal or termination of the unlawful use of the building or structure. The local law enforcement agency of the jurisdiction shall be requested by the fire official to make arrests for any offense against this code or orders of the fire official affecting the immediate safety of the public when the fire official is not certified in accordance with § 27-34.2 of the Code of Virginia.

~~F-107.9~~ *F-106.9* . Issuing summons for violation. If certified in accordance with § 27-34.2 of the Code of Virginia, the fire official may issue a summons in lieu of the notice of violation.

~~F-107.10~~ *F-106.10* . Penalty for violation. Violations are a Class 1 misdemeanor in accordance with § 27-100 of the Code of Virginia. Each day that a violation continues, after a service of notice as provided for in this code, shall be deemed a separate offense.

~~F-107.11~~ *F-106.11* . Abatement of violation. Conviction of a violation of the SFPC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the SFPC relating to use of the building or premises.

ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL FIRE PREVENTION CODE/ 1990 1993 EDITION.

As provided in Section F-101.3 of the SFPC, the amendments noted in this addendum shall be made to the BOCA National Fire Prevention Code/ 1990 1993 Edition for use as part of the SFPC.

ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT .

~~1. Article Chapter 1, Administration and Enforcement , is deleted in its entirety and replaced with Article Chapter 1 of the SFPC.~~

ARTICLE CHAPTER 2. DEFINITIONS.

~~1. A.~~ Change Section ~~F-200.3~~ *F-201.3* to read:

~~F-200.3~~ *F-201.3* . Terms defined in the other codes. Where terms are not defined in this code and are defined in the USBC, they shall have the meanings defined by the USBC.

~~2. B.~~ Change the following definitions in Section ~~F-201.0~~ *F-202.0* , General Definitions, to read:

"Blasting agent" means any explosive material that has been tested and approved in accordance with the provisions of DOT 49 CFR which includes that the finished

product, as mixed for use and shipment, cannot be detonated by a No. 8 test blasting cap when unconfined.

"Building code official" means the designated authority charged with the administration and enforcement of the USBC, Volume I - New Construction Code.

"Code official" means the designated authority charged with the administration and enforcement of the USBC, Volume II - Building Maintenance Code.

Note: When "code official" appears in the BOCA National Fire Prevention Code, it shall mean "fire official."

"Explosive" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term "explosive" includes all materials classified as Class A, Class B, or Class C explosives by DOT regulations and includes, but is not limited to, dynamite, black powder, pellet powders, smokeless powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonate fuse, instantaneous fuse, igniter cord and igniters.

"Fireworks" means any item known as firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and which explodes, rises into the air or travels laterally, or fires projectiles into the air. The term "fireworks" does not include auto flares, caps for pistols, pinwheels, sparklers, fountains or Pharaoh's Serpents provided, however, these permissible items may only be used, ignited or exploded on private property with the consent of the owner of such property.

"Structure" means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

~~3. C.~~ Add these new definitions to Section ~~F-201.0~~ *F-202.0* , General Definitions:

"Agricultural blasting" means any blasting operation which is conducted on no less than five acres of real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code of Virginia.

"Artificial barricade" means an artificial mound or revetted wall of earth of a minimum thickness of three feet.

"Barricaded" means the effective screening of a building

containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet above the center of a railway or highway shall pass through such barrier.

"Blaster" or "shot firer" means that qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

"Building Code" means the building code in effect at the time of construction.

"Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

"Explosive materials" means explosives, blasting agents and detonators.

"Fire official" means the designated authority charged with the administration and enforcement of the SFPC.

"Highway" means any public street, public alley, or public road. "Public Highways Class A to D" are highways with average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbett, Vol. 1, Table 46, Sec. 3-74, 1956 Edition, John Wiley and Sons).

"Inhabited building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

"Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

"Natural barricade" means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

"Peak particle velocity" means the maximum component

of the three mutually perpendicular components of motion at a given point.

"Propellant-actuated power device" means any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge. (See special industrial explosive device.)

"Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight (and that of its own load) rests upon or is carried by another vehicle.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

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

4. D. Delete the following definitions from Section F-201.0 F-202.0, General Definitions:

Liquefied petroleum gas (LP-gas or LPG)

Liquefied petroleum gas equipment

ARTICLE [CHAPTER 3.] GENERAL [PRECAUTIONS AGAINST FIRE.]

1. Change Section F-301.1 to read:

F-301.1. General. Open burning shall be allowed in accordance with the laws and regulations set forth by the State Air Pollution Control Board, the Department of Forestry, and as regulated by the locality.

2. [Delete Section] F-318.0 [F-315.0 ; Fire Safety During Construction, Alteration and Demolition.]

ARTICLE CHAPTER 4. HAZARD ABATEMENT IN EXISTING BUILDINGS, OPEN FLAMES OR BURNING.

Change Section F-403.1 to read:

F-403.1. General. Open burning shall be allowed in accordance with the laws and regulations set forth by the State Air Pollution Control Board, the Department of Forestry, and as regulated by the locality.

1. Delete Article 4, Hazard Abatement in Existing Buildings, as it is covered by Sections F-100.7 and F-100.8 of the SFPC and Volume I and Volume II of

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the USBC.

ARTICLE CHAPTER 5. FIRE PROTECTION SYSTEMS.

~~1.~~ Add new Section ~~F-518.0~~ *F-519.0* , Smoke Detectors for the Deaf and Hearing-impaired, to read:

SECTION ~~F-518.0~~ *F-519.0* . SMOKE DETECTORS FOR THE DEAF AND HEARING-IMPAIRED.

~~F-518.1~~ *F-519.1* . Audible and visual alarms. Audible and visual alarms, meeting the requirements of UL Standard 1638, and installed in accordance with NFPA/ANSI 72G, shall be provided in occupancies housing the hard of hearing, as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be acceptable.

ARTICLE CHAPTER 7. EMERGENCY PLANNING AND PREPAREDNESS.

~~1.~~ Add new Section ~~F-706.4~~ *F-707.4* , Fire Exit Drills, to read:

~~F-706.4~~ *F-707.4* . Fire exit drills. Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.

ARTICLE 16: CHAPTER 18. OIL AND GAS PRODUCTION.

~~1.~~ Delete ~~Article 16 Chapter 18~~ , Oil and Gas Production, as it is covered by the Virginia Gas and Oil Act, [~~Title 45-1,~~] Chapter 22.1 [(~~§ 45.1-361.1 et seq.~~) of ~~Title 45.1~~] of the Code of Virginia.

ARTICLE 26: CHAPTER 30. EXPLOSIVES, AMMUNITION AND BLASTING AGENTS.

~~1.~~ ~~Article 26 Chapter 30~~ , Explosives, Ammunition and Blasting Agents, is deleted in its entirety and replaced with ~~Article 26 Chapter 30~~ of the SFPC, as follows:

SECTION ~~F-2600.0~~ *F-3001.0* . GENERAL.

~~F-2600.1~~ *F-3001.1* . Scope. The equipment, processes and operations involving the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents shall comply with the applicable requirements of this code and the provisions of this article and shall be maintained in accordance with NFIPA 495, NFIPA 498, and DOT 49CFR listed in Appendix A except as herein specifically exempted or where provisions of this article do not specifically cover conditions and operations, and with the Institute of Makers of Explosives (IME) Safety

Library Publications, with Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board, and with the Virginia Motor Carrier Regulations.

~~F-2600.2~~ *F-3001.2* . Exceptions. Nothing in this article shall be construed as applying to the following explosive uses:

1. The Armed Forces of the United States or of a state.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The sale or use of fireworks which are regulated by ~~Article 27 Chapter 31~~ .
4. Laboratories engaged in testing explosive materials.
5. The possession, storage and use of not more than five pounds (2.27 kg) of smokeless powder, black powder, and 1000 small arms primers for hand loading of small arms ammunition for personal use.
6. The manufacture, possession, storage and use of not more than five pounds (2.27 kg) of explosives or blasting agents in educational, governmental or industrial laboratories for instructional or research purposes when under the direct supervision of experienced, competent persons.
7. The transportation and use of explosives or blasting agents by [~~the United States Department of Alcohol, Tobacco and Firearms, the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service any federal agency~~], the Virginia Department of State Police, or [~~qualified~~] fire and law-enforcement officials acting in their official capacity in the discharge of their duties; nor to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia (Department of Mines, Minerals and Energy).

~~F-2600.3~~ *F-3001.3* . Permit required. A permit shall be obtained from the code official for any of the following conditions or operations:

1. To possess, store, or otherwise dispose of explosives or blasting agents.
2. To use explosives or blasting agents:
 - a. A permit shall be issued for each project.
 - b. The permit shall specify the type of blasting and any special conditions. To the extent that blasting will occur within any waters of the Commonwealth or in any of the waters under its jurisdiction, evidence of a valid Marine Resources Commission permit, or "no permit necessary" authorization, will

be required.

3. To operate a terminal for handling explosives or blasting agents.

4. To manufacture explosives or blasting agents, providing the following conditions are met:

a. Registration with the Department of Housing and Community Development;

b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and

c. Valid license to do business in the Commonwealth of Virginia.

5. To sell explosives and blasting agents, providing the following conditions are met:

a. Registration with the Department of Housing and Community Development;

b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and

c. Valid license to do business in the Commonwealth of Virginia.

Exception: Annual permits for the use of explosives shall be issued to any state regulated public utility.

~~F-2600.3.1~~ *F-3001.3.1* . Prohibited permits. Permits as required above shall not be issued for:

1. Liquid nitroglycerin and nitrate esters.
2. Dynamite (except gelatin dynamite) containing over 60% of liquid explosive ingredient.
3. Leaking, damaged, or defective packages or containers of high explosives.
4. Nitrocellulose in a dry and uncompressed condition to be shipped or transported.
5. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition.

Exception. Fulminate of metals which is a component of manufactured articles not otherwise forbidden.

6. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products or their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167°F (75°C).

7. New explosives until approved by DOT 49CFR listed in Appendix A, except for permits issued to educational, governmental or industrial laboratories for

instructional or research purposes.

8. Explosives forbidden by DOT 49CFR listed in Appendix A.

9. Explosives not packed or marked in accordance with the requirements of DOT 49CFR listed in Appendix A.

10. Explosives containing an ammonium salt and a chlorate.

~~F-2600.4~~ *F-3001.4* . Certification required. The use of explosive materials shall be conducted or supervised on-site by blasters certified in accordance with [~~Part IV of~~] the Virginia Certification Standards [~~for Building and Amusement Device Inspectors, Blasters and Tradesmen (VR 394-01-2)~~]. The blaster shall carry proof of certification during the loading or firing of explosive materials.

Exception: Individuals conducting agricultural blasting operations on their own property.

~~F-2600.4.1~~ *F-3001.4.1* . Certification fee. The Department of Housing and Community Development shall charge a \$20 fee to applicants for *restricted blaster certification* as a *or unrestricted blaster certification* .

~~F-2600.5~~ *F-3001.5* . Liability insurance. The company or individual applying for a permit to blast, manufacture, or sell explosives shall provide proof of insurance in an amount determined by the fire official but in no case less than \$500,000.

Exception: Liability insurance shall not be required with an agricultural blasting permit when the blast is conducted on the applicant's personal property.

SECTION ~~F-2601.0~~ *F-3002.0* . GENERAL REQUIREMENTS.

~~F-2601.1~~ *F-3002.1* . Storage. The storage of explosives and blasting agents is prohibited within the legal geographic boundaries of any district where such storage is prohibited by the authority having jurisdiction.

Exception: Temporary storage for use in connection with approved blasting operations; provided, however, this prohibition shall not apply to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material.

~~F-2601.2~~ *F-3002.2* . Sale and display. Explosives shall not be sold, given, delivered, or transferred to any person or company not in possession of a valid permit. A person shall not sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly or education.

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SECTION ~~F-2602.0~~ F-3003.0 . STORAGE OF EXPLOSIVE MATERIALS.

~~F-2602.1~~ F-3003.1 . General. Explosives, including special industrial high explosive materials, shall be stored in magazines which meet the requirements of this article. This shall not be construed as applying to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material. Magazines shall be in the custody of a competent person at all times who shall be at least 21 years of age, and who shall be held responsible for compliance with all safety precautions.

~~F-2602.2~~ F-3003.2 . Control in wholesale and retail stores. Explosive materials shall not be stored within wholesale or retail stores. The storage of explosives for wholesale and retail sales shall be in approved outdoor magazines except that not more than 50 pounds of black or smokeless powder may be stored in a Type 4 indoor magazine.

~~F-2602.3~~ F-3003.3 . Magazine clearances. Magazines shall be located away from inhabited buildings, passenger railways, public highways and other magazines in conformance with Table F-2602 F-3003 , except as provided in Section ~~F-2602.2~~ F-3003.2 .

~~F-2602.4~~ F-3003.4 . Magazine construction. Magazines shall be constructed and maintained in accordance with IME publication No. 1.

Note: Refer to Section F-2600.4 for the use of magazines.

~~F-2602.4.1~~ F-3003.4.1 . Magazine heat and light. Magazines shall not be provided with artificial heat or light, except that if artificial light is necessary, an approved electric safety flashlight or safety lantern shall be used.

~~F-2602.5~~ F-3003.5 . Safety precautions. Smoking, matches, open flames, spark producing devices and firearms shall be prohibited inside or within 50 feet (15.24m) of magazines. Combustible materials shall not be stored within 50 feet (15.24m) of magazines.

~~F-2602.5.1~~ F-3003.5.1 . Surrounding terrain. The land surrounding magazines shall be kept clear of brush, dried grass, leaves, trash and debris for a distance of at least 25 feet (7.62 m).

~~F-2602.5.2~~ F-3003.5.2 . Locking security. Magazines shall be kept locked except when being inspected or when explosives are being placed therein or being removed therefrom.

~~F-2602.5.3~~ F-3003.5.3 . Magazine housekeeping. Magazines shall be kept clean, dry and free of grit, paper, empty packages or rubbish.

~~F-2602.5.4~~ F-3003.5.4 . Separation of detonators and

explosives. Blasting caps, electric blasting caps, detonating primers and primed cartridges shall not be stored in the same magazine with other explosives.

Table ~~F-2602~~ F-3003(3)

TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES (2)

QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)		DISTANCES IN FEET				
Pounds Over	Pounds Not Over	Inhabited Buildings (Note 9)		Public Highways Class A to D (Note 11)		
		Barri- caded (6,7,8)	Unbarri- caded	Barri- caded (6,7,8)	Unbarri- caded	
2	0	5	70	140	30	60
5	10	90	180	35	70	
10	20	110	220	45	90	
20	30	125	250	50	100	
30	40	140	280	55	110	
40	50	150	300	60	120	
50	75	170	340	70	140	
75	100	190	380	75	150	
100	125	200	400	80	160	
125	150	215	430	85	170	
150	200	235	470	95	190	
200	250	255	510	105	210	
250	300	270	540	110	220	
300	400	295	590	120	240	
400	500	320	640	130	260	
500	600	340	680	135	270	
600	700	355	710	145	290	
700	800	375	750	150	300	
800	900	390	780	155	310	
900	1,000	400	800	160	320	
1,000	1,200	425	850	165	330	
1,200	1,400	450	900	170	340	
1,400	1,600	470	940	175	350	
1,600	1,800	490	980	180	360	
1,800	2,000	505	1,010	185	370	
2,000	2,500	545	1,090	190	380	
2,500	3,000	580	1,160	195	390	
3,000	4,000	635	1,270	210	420	
4,000	5,000	685	1,370	225	450	

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						QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)	with Traffic Volume of more than 3,000 Vehicles/Day (Notes 10,11)		Separation of Magazines (Note 12 (1))			
							Pounds Over	Pounds Not Over	Barri- caded (6,7,8)	Unbarri- caded	Barri- caded (6,7,8)	Unbarri- caded
5,000	6,000	730	1,460	235	470							
6,000	7,000	770	1,540	245	490							
7,000	8,000	800	1,600	250	500							
8,000	9,000	835	1,670	255	510							
9,000	10,000	865	1,730	260	520							
10,000	12,000	875	1,750	270	540							
12,000	14,000	885	1,770	275	550							
14,000	16,000	900	1,800	280	560	2	0	5	51	102	6	12
16,000	18,000	910	1,800	285	570	5	10		64	128	8	16
18,000	20,000	975	1,950	290	580	10	20		81	162	10	20
20,000	25,000	1,055	2,000	315	630	20	30		93	186	11	22
25,000	30,000	1,130	2,000	340	680	30	40		103	206	12	24
30,000	35,000	1,205	2,000	360	720	40	50		110	220	14	28
35,000	40,000	1,275	2,000	380	760	50	75		127	254	15	30
40,000	45,000	1,340	2,000	400	800	75	100		139	278	16	32
45,000	50,000	1,400	2,000	420	840	100	125		150	300	18	36
50,000	55,000	1,460	2,000	440	880	125	150		159	318	19	38
55,000	60,000	1,515	2,000	455	910	150	200		175	350	21	42
60,000	65,000	1,565	2,000	470	940	200	250		189	378	23	46
65,000	70,000	1,610	2,000	485	970	250	300		201	402	24	48
70,000	75,000	1,655	2,000	500	1,000	300	400		221	442	27	54
75,000	80,000	1,695	2,000	510	1,020	400	500		238	476	29	58
80,000	85,000	1,730	2,000	520	1,040	500	600		253	506	31	62
85,000	90,000	1,760	2,000	530	1,060	600	700		266	532	32	64
90,000	95,000	1,790	2,000	540	1,080	700	800		278	556	33	66
95,000	100,000	1,815	2,000	545	1,090	800	900		289	578	35	70
100,000	110,000	1,835	2,000	550	1,100	900	1,000		300	600	36	72
110,000	120,000	1,855	2,000	555	1,110	1,000	1,200		318	636	39	78
120,000	130,000	1,875	2,000	560	1,120	1,200	1,400		336	672	41	82
130,000	140,000	1,890	2,000	565	1,130	1,400	1,600		351	702	43	86
140,000	150,000	1,900	2,000	570	1,140	1,600	1,800		366	732	44	90
150,000	160,000	1,935	2,000	580	1,160	1,800	2,000		378	756	45	90
160,000	170,000	1,965	2,000	590	1,180	2,000	2,500		408	816	49	98
170,000	180,000	1,990	2,000	600	1,200	2,500	3,000		432	864	52	104
180,000	190,000	2,010	2,000	605	1,210	3,000	4,000		474	948	58	116
190,000	200,000	2,030	2,000	610	1,220	4,000	5,000		513	1,026	61	122
200,000	210,000	2,055	2,000	620	1,240	5,000	6,000		546	1,092	65	130
210,000	230,000	2,100	2,100	635	1,270	6,000	7,000		573	1,146	68	136
230,000	250,000	2,155	2,155	650	1,300	7,000	8,000		600	1,200	72	144
250,000	275,000	2,215	2,215	670	1,340	8,000	9,000		624	1,248	75	150
275,000	300,000	2,275	2,275	690	1,380	9,000	10,000		645	1,290	78	156
						10,000	12,000		687	1,374	82	164
						12,000	14,000		723	1,446	87	174
						14,000	16,000		756	1,512	90	180

Passenger Railways
Public Highways

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16,000	18,000	786	1,572	94	188
18,000	20,000	813	1,626	98	196
20,000	25,000	876	1,752	105	210
25,000	30,000	933	1,866	112	224
30,000	35,000	981	1,962	119	238
35,000	40,000	1,026	2,000	124	248
40,000	45,000	1,068	2,000	129	258
45,000	50,000	1,104	2,000	135	270
50,000	55,000	1,140	2,000	140	280
55,000	60,000	1,173	2,000	145	290
60,000	65,000	1,206	2,000	150	300
65,000	70,000	1,236	2,000	155	310
70,000	75,000	1,263	2,000	160	320
75,000	80,000	1,293	2,000	165	330
80,000	85,000	1,317	2,000	170	340
85,000	90,000	1,344	2,000	175	350
90,000	95,000	1,368	2,000	180	360
95,000	100,000	1,392	2,000	185	370
100,000	110,000	1,437	2,000	195	390
110,000	120,000	1,479	2,000	205	410
120,000	130,000	1,521	2,000	215	430
130,000	140,000	1,557	2,000	225	450
140,000	150,000	1,593	2,000	235	470
150,000	160,000	1,629	2,000	245	490
160,000	170,000	1,662	2,000	255	510
170,000	180,000	1,695	2,000	265	530
180,000	190,000	1,725	2,000	275	550
190,000	200,000	1,755	2,000	285	570
200,000	210,000	1,782	2,000	295	590
210,000	230,000	1,836	2,000	315	630
230,000	250,000	1,890	2,000	335	670
250,000	275,000	1,950	2,000	360	720
275,000	300,000	2,000	2,000	385	770

Numbers in () refer to explanatory notes

NOTE 1 - "Explosive materials" means explosives, blasting agents and detonators.

NOTE 2 - "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. A list of explosives determined to be within the coverage of "18 U.S.C. Chapter 40; Importation, Manufacture, Distribution and Storage of Explosive Materials" is issued at least annually by the Director of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to eight pounds of high explosives per 1,000 feet. Heavier or lighter core loads should be

rated proportionately.

NOTE 3 - "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive, provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

NOTE 4 - "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at $\pm 1/2$ lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

NOTE 5 - "Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

NOTE 6 - "Natural barricade" means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NOTE 7 - "Artificial barricade" means an artificial mound or revetted wall of earth of a minimum thickness of three feet.

NOTE 8 - "Barricaded" means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet above the center of a railway or highway shall pass through such barrier.

NOTE 9 - "Inhabited building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

NOTE 10 - "Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

NOTE 11 - "Highway" means any public street, public alley, or public road. "Public highways Class A to D" are highways with average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbett, Vol. 1; Table 46, Sec. 3-74, 1956 Edition, John Wiley and Sons).

NOTE 12 NOTE 1 - When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or

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more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

NOTE 13 *NOTE 2* - Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.

NOTE 14 *NOTE 3* - This table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

F-2602.5.5 *F-3003.5.5* . Explosive unpacking. Metal or wooden packages of explosives shall not be unpacked or repacked in a magazine nor within 50 feet (15.24m) of a magazine.

F-2602.5.6 *F-3003.5.6* . Magazine contents. Magazines shall not be used for the storage of any metal tools or of any commodity except explosives, but this restriction shall not apply to the storage of blasting agents, blasting supplies and oxidizers used in compound blasting agents.

F-2602.6 *F-3003.6* . Unstable explosives. When an explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if liquid leaks from any explosive, then the person in possession of such explosive shall immediately report that fact to the code official and upon his approval shall proceed to destroy such explosives and clean floors stained with nitroglycerin or other such liquids in accordance with the instructions of the manufacturer. Only qualified, experienced persons shall do the work of destroying explosives.

Note: Disposal of explosives as "waste" should be in accordance with the Department of Waste Management regulations.

F-2602.7 *F-3003.7* . [Class I] Magazine warnings. Property upon which *Class Type I* magazines and outdoor magazines of *Types 2, 4 and 5* are located shall be posted with signs reading stating "Explosives - Keep Off." Such signs shall be located so as to minimize such that the possibility of a bullet traveling in the direction of shot at the sign and hitting the magazine if anyone shoots at the sign is minimized.

F-2602.8 *Class II magazine warnings*. *Class II* magazines shall be painted red and shall bear lettering in white, on all sides and top at least three inches (76 mm) high, "Explosives - Keep Fire Away."

SECTION ~~F-2603.0~~ *F-3004.0* . TRANSPORTATION OF EXPLOSIVES.

F-2603.1 *F-3004.1* . General. The transportation of explosive materials shall comply with applicable provisions of the

Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board.

F-2603.2 *F-3004.2* . Enforcement. The Department of State Police, together with all law enforcement and peace officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs, and Office of Hazardous Materials Transportations, in federal safety regulations and safety inspections procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this section. Those officers shall annually receive in-service training in current federal safety standards and safety inspection procedures pertaining to the transportation of hazardous materials.

SECTION ~~F-2604.0~~ *F-3005.0* . STORAGE OF BLASTING AGENTS AND SUPPLIES.

F-2604.1 *F-3005.1* . General. Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in the manner set forth in Section ~~F-2602.0~~ *F-3003.0* for explosives. The quantity of blasting agents and one half the quantity of oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.

F-2604.2 *F-3005.2* . Storage location. Buildings used for storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways in accordance with Table ~~F-2602~~ *F-3003* .

F-2604.3 *F-3005.3* . Storage housekeeping. The interior of buildings used for the storage of blasting agents shall be kept clean and free from debris and empty containers. Spilled materials shall be cleaned up promptly and safely removed. Combustible materials, flammable liquids, corrosive acids, chlorates, nitrates other than ammonium nitrate or similar materials shall not be stored in any building containing blasting agents unless separated therefrom by construction having a fire-resistance rating of not less than one hour. The provisions of this section shall not prohibit the storage of blasting agents together with nonexplosive blasting supplies.

F-2604.4 *F-3005.4* . Trailer storage requirements. Semitrailers or full trailers used for temporarily storing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table ~~F-2602~~ *F-3003* . Trailers shall be provided with substantial means for locking and trailer doors shall be kept locked except during the time of placement or removal of blasting agents.

F-2604.5 *F-3005.5* . Oxidizers and fuels. Piles of oxidizers and buildings containing oxidizers shall be adequately separated from readily combustible fuels.

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~~F-2604.6~~ *F-3005.6* . Oxidizer handling. Caked oxidizer, either in bags or in bulk, shall not be loosened by blasting.

SECTION ~~F-2605.0~~ *F-3006.0* . HANDLING OF EXPLOSIVES.

~~F-2605.1~~ *F-3006.1* . Mixing blasting agents. Buildings or other facilities used for mixing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table ~~F-2602~~ *F-3003* .

~~F-2605.2~~ *F-3006.2* . Quantity of mixing agents. Not more than one day's production of blasting agents or the limit determined by Table ~~F-2602~~ *F-3003* , whichever is less, shall be permitted in or near the building or other facility used for mixed blasting agents. Larger quantities shall be stored in separate buildings or magazines.

~~F-2605.3~~ *F-3006.3* . Compounding standards. Compounding and mixing of recognized formulations of blasting agents shall be conducted in accordance with NFiPA 495 and DOT 49CFR listed in ~~Appendix A Chapter 44~~ .

~~F-2605.4~~ *F-3006.4* . Ignition protection. Smoking or open flames shall not be permitted within 50 feet (15.24m) of any building or facility used for the mixing of blasting agents.

~~F-2605.4.1~~ *F-3006.4.1* . Unpacking tools. Tools used for opening packages of explosives shall be constructed of nonsparking materials.

Exception. Metal slitters may be used for opening paper and fiberboard containers.

~~F-2605.5~~ *F-3006.5* . Waste disposal. Empty oxidizer bags shall be disposed of daily by burning in a safe manner (in an open area and at a safe distance from buildings or combustible materials).

~~F-2605.5.1~~ *F-3006.5.1* . Packing material disposal. Empty boxes and paper and fiber packing materials which have previously contained high explosives shall not be used again for any purpose, but shall be destroyed by burning at an approved, isolated location out-of-doors, and any person shall not be closer than 100 feet (30.48 m) during the course of said burning.

~~F-2605.6~~ *F-3006.6* . Control. Explosives shall not be abandoned.

SECTION ~~F-2606.0~~ *F-3007.0* . BLASTING.

~~F-2606.1~~ *F-3007.1* . Time. Blasting operations shall be conducted during daylight hours except when otherwise approved.

~~F-2606.2~~ *F-3007.2* . Personnel. The handling and firing of

explosives shall be performed by the person certified as a blaster under Section ~~F-2600.2.3~~ *F-3001.4* of this code or by employees under that person's direct on-site supervision who are at least 21 years old.

1. A person shall not handle explosives while under the influence of intoxicants or narcotics.

2. A person shall not smoke or carry matches while handling explosives or while in the vicinity thereof.

3. An open flame light shall not be used in the vicinity of explosives.

~~F-2606.3~~ *F-3007.3* . Clearance at site. At the site of blasting operations, Class II magazines shall be located as far away as practicable from neighboring inhabited buildings, railways, highways, and other magazines.

~~F-2606.4~~ *F-3007.4* . Notice. Whenever blasting is being conducted within 200 feet of gas, electric, water, fire, alarm, telephone, telegraph or steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice. This time limit shall not be waived except in an emergency as determined by the code official.

~~F-2606.5~~ *F-3007.5* . Responsibility. Before a blast is fired, the person in charge shall make certain that all surplus explosives are in a safe place, all persons and vehicles are at a safe distance or under sufficient cover, and a warning signal has been sounded.

~~F-2606.6~~ *F-3007.6* . Precautions. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radio or radar transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity. These precautions shall include:

1. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;

2. The posting of signs warning against the use of mobile radio transmitters on all roads within 350 feet (106.75m) of the blasting operations; and

3. Compliance with NFiPA 495 listed in Appendix A when blasting within 1-1/2 miles (2.41 km) of broadcast or highpower short wave radio transmitters.

4. Misfires shall be handled as directed by equipment manufacturers with no one entering the blasting site, except the blaster, until the loaded charges have been made to function or have been removed.

~~F-2606.7~~ *F-3007.7* . Congested areas. As required by the fire official, when blasting is done in congested areas of

in close proximity to a building, structure, railway, highway or any other installation susceptible to damage, the blast shall be covered before firing, with a mat or earth, or both, so that it is capable of preventing rock from being thrown into the air out of the blast area.

~~F-2606.8~~ *F-3007.8* . Blast records. A record of each blast shall be kept and retained for at least three years and shall be available for inspection by the fire official. These records shall contain the following minimum data:

1. Name of contractor.
2. Location and time of blast.
3. Name of certified blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type and amount of explosives.
- * 8. Amount of explosives per delay of eight milliseconds or greater.
9. Method of firing and type of circuit.
10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building.
11. Weather conditions.
12. Whether or not mats or other precautions were used.
- * 13. Type of detonators and delay periods.
14. Type and height of stemming.
15. Seismograph records where indicated.

* - [*Items number eight (8) and thirteen (13) Subdivisions 8 and 13 of this section*] are not applicable to restricted blasters.

~~SECTION F-2607.0~~ *F-3008.0* .
STANDARDS FOR CONTROL OF AIRBLAST AND
GROUND VIBRATION.

~~F-2607.1~~ *F-3008.1* . Airblast. This section shall apply to airblast effects as recorded at the location of any private dwelling, public building, school, church, and community or institutional building not owned or leased by the person conducting or contracting for the blasting operation. If requested by a property owner registering a complaint and deemed necessary by the fire official, measurements of three consecutive blasts, using approved instrumentation,

shall be made near the structure in question.

~~F-2607.1.1~~ *F-3008.1.1* . Maximum airblast. The maximum airblast at any inhabited building, resulting from blasting operations, shall not exceed 130 decibels peak, or 140 decibels peak at any uninhabited building, when measured by an instrument having a flat frequency response (+3 decibels) over a range of at least six to 200 Hertz.

~~F-2607.2~~ *F-3008.2* . Ground vibration. This section shall provide for limiting ground vibrations at structures that are neither owned nor leased by the person conducting or contracting for the blasting operation. Engineered structures may safely withstand higher vibration levels based on an approved engineering study upon which the fire official may then allow higher levels for such engineered structures.

Note: Each Table, ~~F-2607A~~ *F-3008A* to ~~F-2607C~~ *F-3008C* , has an increasing degree of sophistication and each can be implemented either by the fire official as a result of complaints or by the contractor to determine site specific vibration limits. The criteria in Tables ~~F-2607~~ *F-3008* A, B, and C and Section ~~F-2607.3~~ *F-3008.3* are intended to protect low-rise structures including dwellings.

~~F-2607.2.1~~ *F-3008.2.1* . Blasting without instrumentation. Where no seismograph is used to record vibration effects, the explosive charge weight per delay (eight milliseconds or greater) shall not exceed the limits shown in Table ~~F-2607A~~ *F-3008A* . When charge weights per delay on any single delay period exceed 520 lbs., then ground vibration limits for structures shall comply with Tables ~~F-2607B~~ *F-3008B* , ~~F-2607C~~ *F-3008C* , or Section ~~F-2607.3~~ *F-3008.3* .

~~F-2607.2.2~~ *F-3008.2.2* . Monitoring with instrumentation. Where a blaster determines that the charge weights per delay given in Table ~~F-2607A~~ *F-3008A* are too conservative, he may choose to monitor (at the closest conventional structure) each blast with an approved seismograph and conform to the limits set by Tables ~~F-2607B~~ *F-3008B* , ~~F-2607C~~ *F-3008C* , or Section ~~F-2607.3~~ *F-3008.3* .

Note: From this point on, the explosive charge weight per delay may be increased, but the vibration levels detailed in Tables ~~F-2607B~~ *F-3008B* , ~~F-2607C~~ *F-3008C* , or Section ~~F-2607.3~~ *F-3008.3* shall not be exceeded.

Table ~~2607~~ *F-3008* A(a)
CHARGE WEIGHT PER DELAY DEPENDENT ON
DISTANCE

Distance to a Building		Weight of Explosives per Delay	Distance to a Building		Weight of Explosives per Delay
Feet over	Feet not over	Pounds	Feet over	Feet not over	Pounds
.....					
.....					

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0	5	1/4	250	260	45
5	10	1/2	260	280	49
10	15	3/4	280	300	55
15	60	Note (b)	300	325	61
60	70	6	325	350	69
70	80	7 1/4	350	375	79
80	90	9	375	400	85
90	100	10 1/2	400	450	98
100	110	12	450	500	115
110	120	13 3/4	500	550	135
120	130	15 1/2	550	600	155
130	140	17 1/2	600	650	175
140	150	19 1/2	650	700	195
150	160	21 1/2	700	750	220
160	170	23 1/4	750	800	240
170	180	25	800	850	263
180	190	28	850	900	288
190	200	30 1/2	900	950	313
200	220	34	950	1000	340
220	240	39	1000	1100	375
240	250	42	1100	1200	435
			1200	1300	493

Note a. Over 60 feet this table is based upon the formula:

$$W = D 1.5/90$$

Note b. One tenth of the pound of explosive per foot of distance to a building.

Table 2607 F-3008 B
PEAK PARTICLE VELOCITY DEPENDENT ON DISTANCE

Distance		Peak Particle Velocity of Any One Component/a/
Feet over	feet not over	Inches per second
0	100	2.00
100	500	1.50
500	1000	1.00
over	1000	0.75

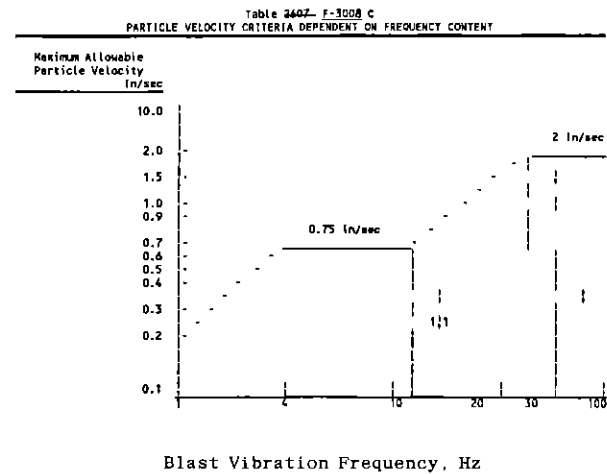
Note [a.]The instrument's transducer shall be firmly coupled to the ground.

F-2607.3 F-3008.3 . Response spectra. A relative velocity of 1.5 inches per second or less, within the 4 to 12 Hertz range of natural frequencies for low rise structures, shall be recorded as determined from an approved response

spectra.

F-2607.4 F-3008.4 . Instrumentation. A direct velocity recording seismograph capable of recording the continuous wave form of the three mutually perpendicular components of motion, in terms of particle velocity, shall be used and shall have the following characteristics:

1. Each seismograph shall have a frequency response from two to 150 Hertz or greater and a velocity range from 0.0 to 2.0 inches per second or greater, and shall adhere to design criteria for portable seismographs outlined in U.S. Bureau of Mines RI 5708, RI 6487, and RI 8506.
2. All field seismographs shall be capable of internal dynamic calibration and shall be calibrated according to the manufacturers' specifications at least once per year.
3. All seismographs shall be operated by competent people trained in their correct use and seismograph records shall be analyzed and interpreted as may be required by the fire official.



Note: This criteria is derived from the U.S. Bureau of Mines - RI 8507 (Appendix B) and provides a continuously variable particle velocity criteria dependent on the frequency content of the ground motion. The method of analysis shall be approved by the Fire Official and shall provide an analysis showing all the frequencies present over the 1-50 Hertz range.

F-2607.5 F-3008.5 . Seismographic records. A record of each blast shall be kept. All records, including seismograph reports, shall be retained for at least three years and shall be available for inspection. Records shall include the following information:

1. Name of company or contractor.
2. Location, date and time of blast.

3. Name, signature and social security number of blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type of explosives used.
8. Total amount of explosives used.
9. Maximum amount of explosives per delay period of eight milliseconds or greater.
10. Method of firing and type of circuit.
11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
12. Weather conditions including such factors as wind direction, etc.
13. Height or length of stemming.
14. Type of protection, such as mats, that were used to prevent flyrock.
15. Type of detonators used and delay period used.
16. The exact location of the seismograph and the distance of the seismograph from the blast.
17. Seismograph readings, where required, shall contain:
 - a. Name and signature of person operating the seismograph.
 - b. Name of person analyzing the seismograph records.
 - c. Seismograph reading.
18. The maximum number of holes per delay period of eight milliseconds or greater.

SECTION ~~F-2608.0~~ F-3009.0 .

THEFT OR , DISAPPEARANCE , OF EXPLOSIVES INJURIES OR PROPERTY DAMAGE .

~~F-2608.1~~ F-3009.1 . Reports of stolen explosives. Pursuant to § 27-97.1 of the Code of Virginia, any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with this code shall report to the State Police and the local law-enforcement agency any theft or other disappearance of any explosives or blasting devices from their inventory. In addition,

notification shall be made to the fire official having issued the permit.

~~F-2608.2~~ F-3009.2 . Reports of injuries or property damage. The fire official shall be immediately notified of injuries to any person or damage to any property as a result of the functioning of the explosive.

~~F-2608.3~~ F-3009.3 . Relationship of local fire official and State Fire Marshal. The local fire official shall relay information obtained from reports required by Sections ~~F-2608.1~~ F-3009.1 and ~~F-2608.2~~ F-3009.2 to the Office of the State Fire Marshal.

ARTICLE 27 CHAPTER 31 . FIREWORKS.

1. A. Change Section ~~F-2700.1~~ F-3101.1 to read:

~~F-2700.1~~ F-3101.1 . Scope. The manufacture, transportation, display, sale or discharge of fireworks shall comply with the requirements of Chapter 11 of Title 59 of the Code of Virginia.

B. Delete Section F-3102.0, Definitions.

2. C. Delete Section ~~F-2701.1~~ F-3103.1 , General.

D. Delete Section F-3103.2, Violations.

E. Delete Section F-3103.3, Display, and renumber subsection F-3103.3.1 to F-3103.3.

3. F. Delete Section ~~F-2701.3~~ F-3103.5 , Exemptions Sale of fireworks .

ARTICLE 28 CHAPTER 32 . FLAMMABLE AND COMBUSTIBLE LIQUIDS.

1. Change Section ~~F-2803.5~~ F-3205.5 to read as follows:

~~F-2803.5~~ F-3205.5 . Fuel dispensing outside the building. Fuel dispensers outside the building shall be located a minimum of 10 feet (3048 mm) from the lot line and five feet (1524 mm) from any building opening. Where fuel is dispensed to motor vehicles, the motor vehicle being served shall be located on the premises.

ARTICLE 30 CHAPTER 36 . LIQUEFIED PETROLEUM GASES.

1. Change Section ~~F-3000.1~~ F-3601.1 as follows and delete the remainder of Article 30 Chapter 36 :

~~F-3000.1~~ F-3601.1 . Scope. The equipment, processes and operation for storage, handling, transporting by tank truck or tank trailer, and utilizing LP gases for fuel purposes, and for odorization of LP gases shall comply with the Virginia Liquefied Petroleum Gas Regulations in effect at the time of construction as provided for in Chapter 7 of Title 27 of the Code of Virginia.

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VA.R. Doc. No. R94-467; Filed January 11, 1994, 11:11 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: State Plan for Medical Assistance Relating to PASARR; Education Component of Nursing Facility Care; Nursing Facility Residents' Appeal Rights.
VR 460-01-46.1. Utilization/Quality Control (§ 4.14(a)).
VR 460-01-76. Appeals Process (§ 4.28 (a) and (b)).
VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities (§ 4.39 (a) through (g)).
VR 460-02-4.3900. Definition of Specialized Services.
VR 460-02-4.3910. Categorical Determinations.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care (Attachment 3.1-C).
VR 460-02-4.1410. Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals (REPEALING).
VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement 1 to Attachment 3.1-C).
VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

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

Effective Date: June 1, 1994.

Summary:

The purpose of this action is to promulgate permanent regulations providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

Preadmission screening and annual resident review.

The Omnibus Budget Reconciliation Act (OBRA) of 1987, Part 2, Subtitle C of Title IV, added § 1919 to the Social Security Act. Specifically, § 1919 (b)(3)(F) prohibits a nursing facility from admitting or retaining an individual who has a condition of mental illness or mental retardation unless that individual has been determined by the State Mental Health or Mental Retardation Authority (MH/MRA) to require the level of services provided by a nursing facility. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) is the designated MH/MRA in the Commonwealth.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility.

Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

Education component of nursing facility specialized care services.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that "the nursing facility...provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified.

NF residents' appeal rights.

Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8850. There may be a charge for copies.

VR 460-01-46.1. Utilization/Quality Control.

Citation: 42 CFR 431.60, 42 CFR 456.2, 50 FR 15312, 1902(a)(30)(C) and 1902(d) of the Act, P.L. 99-509 (§ 9431)

§ 4.14. Utilization/Quality Control.

(a) A statewide program of surveillance and utilization control has been implemented that safeguards against unnecessary or inappropriate use of Medicaid services available under this plan and against excess payments, and that assesses the quality of services. The requirements of 42 CFR Part 456 are met:

Directly. Attachment 4.14 A contains the criteria for pre-admission screening and nursing home placement of MI/MR persons.

By undertaking medical and utilization review requirements through a contract with a Utilization and Quality Control Peer Review Organization (PRO) designated under 42 CFR Part 462. The contract with the PRO:

- (1) Meets the requirements of § 434.6(a);
- (2) Includes a monitoring and evaluation plan to ensure satisfactory performance;
- (3) Identifies the services and providers subject to PRO review;
- (4) Ensures that PRO review activities are not inconsistent with the PRO review of Medicare services; and
- (5) Includes a description of the extent to which PRO determinations are considered conclusive for payment purposes.

Quality review requirements described in § 1902(a)(30)(C) of the Act relating to services furnished by HMO's under contract are undertaken through contract with the PRO designated under 42 CFR Part 462.

Citation: 1902(a)(30)(C) and 1902 (d) of the Act, P.L. 99-509, (§ 9431)

By undertaking quality review of services furnished by HMOs under each contract with an HMO through a private accreditation body.

VR 460-01-76. Appeals Process.

Citation: 42 CFR 431.152; AT-79-18; 52 FR 22444; §§ 1902(a)(28)(D)(i) and 1919(e)(7) of the Act; P.L. 100-203 (§ 4211(c)).

§ 4.28. Appeals Process.

(a) The Medicaid agency has established appeals procedures for NFs as specified in 42 CFR 431.153 and 431.154.

(b) The State provides an appeals system that meets the requirements of 42 CFR 431 Subpart E, 42 CFR 483.12, and 42 CFR 483 Subpart E for residents who wish to appeal a notice of intent to transfer or discharge from a NF and for individuals adversely affected by the preadmission and annual resident review requirements of 42 CFR 483 Subpart C.

VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities.

Citation: §§ 1902(a)(28)(D)(1) and 1919(e)(7) of the Act; P.L. 100-203 (§ 4211(c)); P.L. 101-508 (§ 4801(b)).

§ 4.39. Preadmission Screening and Annual Resident Review in Nursing Facilities.

(a) The Medicaid agency has in effect a written agreement with the State mental health and mental retardation the Act; authorities that meet the requirements of 42 (CFR) 431.621(c).

(b) The State operates a preadmission screening and annual resident review program that meets the requirements of 42 CFR 483.100-138.

(c) The State does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.

(d) With the exception of NF services furnished to certain NF residents defined in 42 CFR 483.118(c)(1), the State does not claim as "medical assistance under the State plan" the cost of NF services to individuals who are found not to require NF services.

(e) ATTACHMENT 4.39 specifies the State's definition of specialized services.

(f) Except for residents identified in 42 CFR 483.118(c)(1), the State mental health authority makes categorical determinations that individuals with certain mental conditions or levels of severity of mental illness would normally require specialized services of such an intensity that a specialized services program could not be delivered by the State in most, if not all, NFs and that a more appropriate placement should be utilized.

(g) The State describes a categorical determinations it applies in ATTACHMENT 4.39-A.

VR 460-02-4.3900. Definition of Specialized Services.

The Department of Medical Assistance Services (DMAS) shall define specialized services for the purposes of preadmission screening and annual resident review as follows. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall ensure the provision of services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

1. *Partial hospitalization;*
2. *Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation;*
3. *Day health and rehabilitation;*
4. *Psychosocial rehabilitation;*
5. *Crisis intervention;*

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6. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services;

7. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist;

8. One-to-one supervision necessary for behavior management;

9. Vision and hearing needs related to mental illness or mental retardation for persons over age 21;

10. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21;

11. Habilitation;

12. Supported employment for persons with mental illness or mental retardation;

13. Case management services;

14. Individual psychotherapy;

15. Day treatment;

16. Individual and group counseling; and

17. Inpatient psychiatric care.

VR 460-02-4.3910. Categorical Determinations.

A. A Level II evaluation shall be required for any applicant to a Medicaid-certified nursing facility who is determined, as a result of the Level I identification screening, to have a condition of mental illness or mental retardation as defined in 42 CFR 483.102.

B. If, however, the individual also meets one of the following categorical determinations, a Level II evaluation is not required to be completed for that individual. These determinations may only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the established category.

C. The categorical determinations are:

1. A terminal illness in which a physician has documented that life expectancy is less than six months; and

2. A severe physical illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation must be available which fully describes the severity of

the condition.

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

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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 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~~
Infection control;

(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 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; *and*

(15) Family or caregiver training; ~~and~~

~~(16) Infection control.~~

c. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

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

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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. Psychiatric services resulting from an EPSDT screening.

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and § 4b to Attachment 3.1 A & B Supplement 1, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

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

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMAS" means the Department of Medical Assistance Services.

"JCAHO" means Joint Commission on Accreditation of Hospitals.

"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

2. It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR §§ 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;

(2) Proper treatment of the recipient's psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.

4. Providers of psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. 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,

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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.

6. 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.

7. 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-Language 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-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.

G. 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).

H. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. 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

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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 requested 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 reimbursement 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

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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-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-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 rehabilitation 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;
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

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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 or Medicaid, the individual 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 :

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.

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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.

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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 hours 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 psychologist, 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.

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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

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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-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 services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation 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. 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. 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 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.

VR 460-02-4.1410. Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals (REPEALING).

VR 460-03-3.1301. Nursing Facility and MR Criteria.

§ 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 nursing facility care are divided into two areas: (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) nursing needs.

B. The preadmission screening process marks the beginning of a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. Nursing facility care services are covered by the program for individuals whose needs meet the criteria established by program regulations.

C. Nursing facilities must conduct 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. 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 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 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.

§ 2. Criteria for nursing facility care.

A. 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

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noninstitutional. Both the functional capacity of the individual and his nursing needs must be considered in determining the appropriateness of care.

B. Individuals may be considered appropriate for nursing facility care when one of the following describes their functional capacity:

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. 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).

3. Rated dependent in five to seven of the Activities of Daily Living (Items 1-7), and also rated dependent in Mobility (Item 9).

4. 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.

The following abbreviations shall mean:

I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

A. Bathing

1. Without help (I)
2. MH only (d)
3. HH only (D)
4. MH and HH (D)
5. Is bathed (D)

B. Dressing

1. Without help (I)
2. MH only (d)
3. HH only (D)

4. MH and HH (D)

5. Is dressed (D)

6. Is not dressed (D)

C. Toileting

1. Without help day and night (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Does not use toilet room (D)

D. Transferring

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is transferred (D)

6. Is not transferred (D)

E. Bowel Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. Ostomy - self care (d)

4. Incontinent weekly or more (D)

5. Ostomy - not self care (D)

F. Bladder Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. External device - self care (d)

4. Indwelling catheter - self care (d)

5. Ostomy - self care (d)

7. External device - not self care (D)

8. Indwelling catheter - not self care (D)

9. Ostomy - not self care (D)

G. Eating/Feeding

1. Without help (I)
2. MH only (d)
3. HH only (D)
4. MH and HH (D)
5. Spoon fed (D)
6. Syringe or tube fed (D)
7. Fed by IV or clysis (D)

H. Behavior Pattern and Orientation

1. Appropriate or Wandering/
Passive less than weekly + Oriented (I)
2. Appropriate or Wandering/
Passive less than weekly + Disoriented - Some
Spheres (I)
3. Wandering/Passive Weekly
or More + Oriented (I)
4. Appropriate or Wandering/
Passive less than weekly + Disoriented - All
Spheres (d)
5. Wandering/Passive Weekly
or more + Disoriented - Some or All Spheres (d)
6. Abusive/Aggressive/
Disruptive less than weekly + Oriented or
Disoriented (d)
7. Abusive/Aggressive/
Disruptive weekly or more + Oriented (d)
8. Abusive/Aggressive/
Disruptive weekly or more + Disoriented (D)
9. Mobility
 - a. Goes outside without help (I)
 - b. Goes outside MH only (d)
 - c. Goes outside HH only (D)
 - d. Goes outside MH and HH (D)
 - e. Confined - moves about (D)
 - f. Confined - does not move about (D)

10. Medication Administration

- a. No medications (I)
- b. Self administered - monitored less than weekly
(I)
- c. By lay persons, monitored less than weekly (I)
- d. By Licensed/Professional nurse and/or monitored
weekly or more (D)
- e. Some or all by Professional nurse (D)

11. Joint Motion

- a. Within normal limits (I)
- b. Limited motion (d)
- c. Instability - corrected (I)
- d. Instability - uncorrected (D)
- e. Immobility (D)

§ 4. Nursing needs.

A. Following are examples of services provided or supervised by licensed nursing and professional personnel; however, no single service necessarily indicates a need for nursing facility care:

1. Application of aseptic dressings;
2. Routine catheter care;
3. Inhalation therapy after the regimen has been established;
4. Supervision for adequate nutrition and hydration for patients who, due to physical or mental impairments, are subject to malnourishment or dehydration;
5. Routine care in connection with plaster casts, braces, or similar devices;
6. Physical, occupational, speech, or other therapy;
7. Therapies, exercise and positioning to maintain or strengthen muscle tone, to prevent contractures, decubiti, and deterioration;
8. Routine care of colostomy or ileostomy;
9. Use of restraints including bedrails, soft binders, and wheelchair supports;
10. Routine skin care to prevent decubiti;
11. Care of small uncomplicated decubiti, and local skin rashes; or

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12. Observation of those with sensory, metabolic, and circulatory impairment for potential medical complications.

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.

§ 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 from 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.

§ 7. Adult specialized care criteria.

A. 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. 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. Criteria.

1. The individual must require at a minimum:

- a. Physician visits at least once weekly;
- b. 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. Coordinated multidisciplinary team approach to meet needs.

2. In addition, the individual must meet one of the following requirements:

a. 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. 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. Individuals that require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

(2) Special infection control precautions (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 skilled 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) 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.

A. 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. 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 device based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);
5. Children requiring comprehensive rehabilitative therapy services;
6. Children with terminal illness.

B. Criteria.

1. The child must require at a minimum:
 - a. Physician visits at least once weekly;
 - b. 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. Coordinated multidisciplinary team approach to meet needs;
 - d. The nursing facility must ~~provide~~ *coordinate with*

appropriate state and local agencies 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. 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; 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. 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. Children that require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

(2) 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) 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) Care for terminal illness.

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§ 9. Criteria for care in facilities for mentally retarded persons.

A. 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. 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. 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 waived rehabilitative services for the mentally retarded.

D. 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. 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 expectations 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. 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. The resident must meet the indicated dependency level in two or more of categories 1 through 7.

1. Health Status - To meet this category:

- a. Two or more questions must be answered with a 4, or
- b. Question “j” must be answered “yes.”

2. Communication Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

3. Task Learning Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

4. Personal Care - To meet this category:

- a. Question “a” must be answered with a 4 or a 5, or
- b. Question “b” must be answered with a 4 or a 5, or

c. Questions "c" and "d" must be answered with a 4 or a 5.

5. Mobility - To meet this category:

Any one question must be answered with a 4 or a 5.

6. Behavior - To meet this category:

Any one question must be answered with a 3 or a 4.

7. Community Living - To meet this category:

a. Any two of the questions "b," "e," or "g" must be answered with a 4 or a 5, or

b. Three or more questions must be answered with a 4 or a 5.

LEVEL OF FUNCTIONING SURVEY

1. 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. Medication administration and/or evaluation for effectiveness of a medication regimen? 1...2...3...4

b. Direct services: i.e. care for lesions, dressings, treatments (other than shampoos, foot powder, etc.) 1...2...3...4

c. Seizures control 1...2...3...4

d. Teaching diagnosed disease control and care, including diabetes 1...2...3...4

e. Management of care of diagnosed circulatory or respiratory problems 1...2...3...4

f. Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc. 1...2...3...4

g. Observation for choking/aspiration while eating, drinking? 1...2...3...4

h. Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. 1...2...3...4

i. Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity) 1...2...3...4

j. 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. Communication.

Using the key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

a. Indicate wants by pointing, vocal noises, or signs? 1...2...3...4

b. Use simple words, phrases, short sentences? 1...2...3...4

c. Ask for at least ten things using appropriate names? 1...2...3...4

d. Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? 1...2...3...4

e. Speak in an easily understood manner? 1...2...3...4

f. Identify self, place of residence, and significant others? 1...2...3...4

3. Task learning skills.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

a. Pay attention to purposeful activities for 5 minutes? 1...2...3...4

b. Stay with a 3 step task for more than 15 minutes? 1...2...3...4

c. Tell time to the hour and understand time intervals? 1...2...3...4

d. Count more than 10 objects? 1...2...3...4

e. Do simple addition, subtraction? 1...2...3...4

f. Write or print ten words? 1...2...3...4

g. Discriminate shapes, sizes, or colors? 1...2...3...4

h. Name people or objects when describing pictures? 1...2...3...4

i. Discriminate between "one," "many," "lot"? 1...2...3...4

4. Personal/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. Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? 1...2...3...4...5

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b. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? 1...2...3...4...5

c. Perform bathing function (i.e., bathe, runs bath, dry self, etc.)? 1...2...3...4...5

5. 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. Move (walking, wheeling) around environment? 1...2...3...4...5

b. Rise from lying down to sitting positions, sits without support? 1...2...3...4...5

c. Turn and position in bed, roll over? 1...2...3...4...5

6. Behavior.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, 4=Regularly)

a. Engage in self destructive behavior? 1...2...3...4

b. Threaten or do physical violence to others? 1...2...3...4

c. Throw things, damage property, have temper outbursts? 1...2...3...4

d. Respond to others in a socially unacceptable manner - (without undue anger, frustration or hostility) 1...2...3...4

7. 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. Prepare simple foods requiring no mixing or cooking? 1...2...3...4...5

b. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? 1...2...3...4...5

c. Add coins of various denominations up to one dollar? 1...2...3...4...5

d. Use the telephone to call home, doctor, fire, police? 1...2...3...4...5

e. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.? 1...2...3...4...5

f. Refrain from exhibiting unacceptable sexual behavior in public? 1...2...3...4...5

g. Go around cottage, ward, building, without running away, wandering off, or becoming lost? 1...2...3...4...5

h. Make minor purchases i.e., candy, soft drink, etc.? 1...2...3...4...5

VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

§ 1. Definitions.

"Community Services Board (CSB)" means the local governmental agency responsible for local mental health, mental retardation, and substance abuse services. Boards function as service providers, client advocates, and community educators.

"Dementia" means, for the purposes described herein, having a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987, or a nonprimary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined herein.

"Diagnostic and Statistical Manual of Mental Disorders, 3rd edition" means the 1987 publication of the American Psychiatric Association classifying diagnoses of abnormal behavior.

"Interfacility transfer" means when an individual is transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay. Interfacility transfers are subject to annual resident review rather than preadmission screening. In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports shall accompany the transferring resident.

"Level I identification" means the process performed to identify nursing facility applicants with a condition of mental illness or mental retardation.

"Level II evaluation" means the evaluation process for nursing facility applicants who are identified as having a condition of mental illness or mental retardation as defined herein. The purpose of the Level II evaluation is to recommend placement of and services to nursing facility applicants with statutorily defined mental illness or mental retardation.

"Mental Illness (MI)" means a serious mental illness meeting all of the following requirements:

1. The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised i.

1987 that is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. The disorder is not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined here;

2. The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

a. *Interpersonal functioning.* The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships, and social isolation;

b. *Concentration, persistence, and pace.* The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structures activities occurring in school or home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

c. *Adaptation to change.* The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

3. The treatment history indicates that the individual has experienced at least one of the following:

a. *Psychiatric treatment more intensive than outpatient care more than once in the past two years (e.g., partial hospitalization or inpatient hospitalization); or*

b. *Within the last two years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.*

"Mental Retardation (MR)" means the presence of a

level of retardation (mild, moderate, severe, or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) or has a related condition. A person with related conditions means the individual has a severe chronic disability that meets all of the following conditions:

1. It is attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;

2. It is manifested before the person reaches age 22;

3. It is likely to continue indefinitely; and

4. It results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

"MI/MR Supplement" means the assessment form developed to meet the requirements of OBRA '87. Its purpose is to identify individuals with mental illness and mental retardation before their admission to a nursing facility.

"New admission" means an individual who is admitted to any nursing facility for the first time or does not qualify as a readmission. New admissions are subject to preadmission screening.

"Non-Medicaid-eligible Individuals" means persons who are not Medicaid eligible or are not expected to be Medicaid eligible within 180 days of admission to a nursing facility.

"Nursing Home Preadmission Screening Committee (NHPASC)" means a committee established for the purpose of determining whether a Medicaid-eligible individual meets nursing facility criteria.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health profession who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. In the Commonwealth, authorized professionals and minimal qualifications for a QMHP are as follows:

1. *Physician:* a doctor of medicine or osteopathy licensed in Virginia;

2. *Psychiatrist:* a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia;

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3. *Psychologist*: an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience;

4. *Social worker*: an individual with a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education with at least one year of clinical experience;

5. *Registered nurse*: a registered nurse licensed in the State of Virginia with at least one year of clinical experience; and

6. *Mental health worker*: an individual with professional education, training, and/or a degree in human services or related field from an accredited college deemed equivalent to those described above and at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness.

"Readmission" means an individual who was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions are subject to annual resident review rather than preadmission screening.

"State Mental Health or Mental Retardation Authority (MH/MRA)" means the designated representative of the Department of Mental Health, Mental Retardation and Substance Abuse Services who shall make determinations regarding placement of and services to nursing facility applicants who have conditions of mental illness or mental retardation.

§ 2. Persons subject to nursing home preadmission screening and identification of conditions of mental illness and mental retardation (Level I).

A. As a condition of a nursing facility's Medicaid participation, all persons applying for admission shall be screened to determine whether they have a condition of mental illness (MI) or mental retardation (MR), and if so, whether they require the level of services provided by a nursing facility (NF). Nursing facilities shall ensure that applicants for admission have been screened and those who are identified as being MI or MR are not admitted until determinations have been made by the State Mental Health or Mental Retardation Authority (MH/MRA) with respect to their placement. NHPASCs complete the Level I process for individuals who are Medicaid eligible or expect to become Medicaid eligible within 180 days. Nursing facilities must ensure that the appropriate screenings are conducted for non-Medicaid eligible applicants.

B. No individual, regardless of pay status, may be admitted to a nursing facility unless the Level I screening has been completed, and, if it is determined that the individual has a condition of MI or MR as defined herein,

then he or she shall not be admitted until the Level II determination has been made.

C. The Level I identification function shall provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative if the individual is suspected of having MI or MR and is being referred to the MH/MRA for Level II screening. The NHPASC shall send this notice to Medicaid-eligible individuals who are referred for a Level II screening. The admitting NF shall send the notice to non-Medicaid individuals.

D. All Level I and Level II determinations shall be recorded in the individual's medical record.

E. When a preadmission screening has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the screening has been performed.

F. The state in which the individual is a resident (or will be at the time he or she becomes eligible for Medicaid) must pay for the PASARR and make the required determinations. In the case of non-Medicaid eligible applicants, the receiving NF is responsible to ensure that the appropriate screenings have been completed prior to the individual's admission.

§ 3. Level II determination.

A. For each resident of a NF who has a condition of MI or MR, the MH/MRA, as appropriate, must determine whether the individual requires the level of services provided by a NF, an inpatient psychiatric hospital for individuals under age 21, an institution for mental disease (IMD) providing medical assistance to individuals age 65 and older, an intermediate care facility for the mentally retarded (ICF/MR), or specialized services for either MI or MR.

B. When a Level II evaluation is required, a determination shall be made within an annual average of seven to nine working days of the referral for screening. The MH/MRA shall convey determinations verbally to NFs and the individual and confirm them in writing.

C. The MH/MRA shall notify in writing the following entities of a Level II determination:

1. The evaluated individual and his or her legal representative;
2. The admitting or retaining NF;
3. The individual or resident's attending physician; and
4. The discharging hospital.

D. Each notice described above shall include the

following:

1. Whether a NF level of services is needed;
2. Whether specialized services are needed;
3. The placement options available to the individual; and
4. The rights of the individual to appeal the determination.

§ 4. Categorical determinations.

A. For each individual for whom the Level I screening has resulted in the determination that the individual meets nursing facility level of care and has a condition of MI or MR as defined herein, a Level II evaluation does not have to be completed if one of the following categorical determinations are met:

1. The individual has a terminal illness in which a physician has documented that life expectancy is less than six months; or
2. The individual has a severe illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation shall be available which fully describes the severity of the condition.

B. These categorical determinations shall only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits the category.

§ 5. Annual resident review.

A. A review and determination must be conducted for each resident of a NF who has MI or MR not less often than annually. "Annually" is defined as occurring within every fourth quarter after the previous preadmission screening or annual resident review.

B. When an annual resident review has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the review has been performed.

§ 6. Determinations and placement of individuals with MI or MR.

A. If the MH/MRA determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual. If the MH/MRA determines that a resident or applicant for admission requires both a NF level of services and specialized services for MI or MR, the NF may admit or

retain the individual and the state must provide or arrange for the provision of the specialized services needed by the individual while he resides in the NF.

B. If the MH/MRA determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted. NF services are not a covered Medicaid service for that individual, and further screening is not required.

C. If the MH/MRA determines that a resident requires neither the level of services by a NF nor specialized services for MI or MR, regardless of the length of stay in the facility, the state must (i) arrange for the safe and orderly discharge of the resident from the facility; and (ii) prepare and orient the resident for discharge.

D. For any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services, the state must, in consultation with the resident's family or legal representative and caregivers (i) offer the resident the choice of remaining in the facility or of receiving services in an alternative appropriate setting; (ii) inform the resident of the institutional and noninstitutional alternatives available; (iii) clarify the effect on eligibility for Medicaid services if the resident chooses to leave the facility, including its effect on readmission to the facility or eligibility for community-based services; and (iv) regardless of the resident's choice to remain in the NF or to be discharged to a community setting, provide for, or arrange for the provision of specialized services for the MI or MR.

E. For any resident who has not continuously resided in a NF for at least 30 months before the date of the determination, the state must, in consultation with the resident's family or legal representative and caregivers (i) arrange for the safe and orderly discharge of the resident from the facility; (ii) prepare and orient the resident for discharge; and (iii) provide for, or arrange for the provision of, specialized services for the MI or MR.

F. For the purposes of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services. The 30 months of continuous residence in a NF may include temporary absences for hospitalization and therapeutic leave and may consist of consecutive residences in more than one NF.

G. Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and his or her needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by

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specialized services provided by or arranged for by the state.

§ 7. PASARR evaluation criteria.

A. The state's PASARR program must identify all individuals who are suspected of having MI or MR as defined herein. The identification function and determination that NF criteria is met is termed Level I. Level II is the function of evaluating and determining whether NF placement is appropriate to meet the individual's MH/MR needs and whether specialized services are needed.

B. Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated. PASARR evaluations must involve the individual being evaluated, the individual's legal representative, if one has been designated under state law, and the individual's family if available and the individual or the legal representative agrees to family participation. When parts of a PASARR evaluation are performed by more than one evaluator, there must be interdisciplinary coordination among the evaluators.

C. All information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in a NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation. The determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

D. Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, the PASARR program may need to gather additional information to supplement and verify the currency and accuracy of existing data and to assess proper placement and treatment.

E. For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which (i) identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered; (ii) provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual; (iii) if NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs; (iv) if specialized services are not recommended, identifies any specific MR or MH services which are of a lesser intensity than specialized services that are required to meet the evaluated

individual's needs; (v) if specialized services are recommended, identifies the specific MR or MH services required to meet the evaluated individual's needs; and (vi) includes the basis for the report's conclusions.

F. For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which (i) identifies the name and professional title of the person applying the categorical determination and the data on which the application was made; (ii) explains the categorical determination(s) that has (have) been made; (iii) identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and (iv) includes the bases for the report's conclusions.

G. For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status, mental health, and mental retardation status as documented in medical and social history records. Findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designed under state law by the assessment team or the MH/MRA. The evaluation report must be sent to the individual and his legal representative, appropriate state authority in sufficient time to meet the required time frames, admitting or retaining NF, individual's attending physician, and the discharging hospital if the individual is seeking NF admission from a hospital. The evaluation may be terminated at any time during the evaluation that the individual being evaluated does not have MI or MR or has a primary diagnosis of dementia or a nonprimary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

§ 8. Specialized services.

A. For mental illness, specialized services means the services specified by the state which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that:

1. Is developed and supervised by an interdisciplinary team which includes a physician, qualified mental health professionals, and as appropriate, other professionals;
2. Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness which necessitates supervision by trained mental health personnel;
3. Is directed toward diagnosing and reducing the resident's behavioral symptoms that may necessitate institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of menta.

health services to below the level of specialized services at the earliest possible time; and

4. Prescribes inpatient psychiatric services for any individual determined to be a danger to self or others. For nursing facility residents who are determined to be a danger to self or others due to mental illness, the nursing facility must coordinate admission to an inpatient psychiatric hospital.

B. For mental retardation, specialized services means the services specified by the state which, combined with services provided by the NF or other service providers, results in treatment which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward the following:

1. The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and
2. The prevention or deceleration of regression or loss of current optimal functional status.

C. The state must provide or arrange for the provision of specialized services to all NF residents with MI or MR whose needs are such that continuous supervision, treatment, and training by qualified MH/MR personnel is necessary as identified by their Level I and II assessments. The NF must provide MH or MR services which are of a lesser intensity than specialized services to all residents who need such services.

1. Services that shall be the responsibility of the nursing facility to provide to residents shall include, but are not limited to:

- a. Physical therapy
- b. Speech-language pathology services
- c. Occupational therapy
- d. Restorative nursing
- e. Behavior management interventions that do not require ongoing consultation and monitoring by a licensed psychiatrist or psychologist
- f. Basic grooming and hygiene needs
- g. Nutritional needs, including supplements and assistance with eating
- h. Adjustment needs resulting from admission to a nursing facility and ongoing psychosocial emotional support
- i. Noncustomized durable medical equipment and supplies

2. Specialized services for the purposes of PASARR shall include the following. The State Mental Health or Mental Retardation Authority shall ensure the provision of specialized services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

- a. Partial hospitalization
- b. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation
- c. Day health and rehabilitation
- d. Psychosocial rehabilitation
- e. Crisis intervention
- f. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services
- g. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist
- h. One-to-one supervision necessary for behavior management
- i. Vision and hearing needs related to mental illness or mental retardation for persons over age 21
- j. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21
- k. Habilitation
- l. Supported employment for persons with mental illness or mental retardation
- m. Case management services
- n. Individual psychotherapy
- o. Day treatment
- p. Individual and group counseling
- q. Inpatient psychiatric care

§ 9. Placement options.

A. The placement options and required state actions resulting from PASARR are as follows:

1. Can be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is

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appropriate. If specialized services are also needed, the state is responsible for providing or arranging for the provision of the specialized services.

2. Cannot be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must be not be admitted.

3. Can be considered appropriate for continued placement in a NF. Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate.

4. May choose to remain in the NF even though the placement would otherwise be inappropriate. Any NF resident with MI or MR who does not require the level of services provided by the NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the state must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

5. Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents). Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months be discharged to an appropriate setting where the state must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

6. Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents). Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged. The determination notice must provide information on how, when and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

7. Specialized services needed in a NF. If a

determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for in a timely manner by the state which the individual resides in the NF.

B. The state PASARR system shall maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR. The state PASARR system shall establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed.

§ 10. Evaluating the need for NF services and NF level of care (PASARR/NF).

A. For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether (i) the applicant's or resident's total needs are such that his needs can be met in an appropriate community setting; (ii) the individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required; (iii) if inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs; or (iv) if the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs, another setting such as an ICF/MR (including small, community-based facilities), an IMD providing services to individuals ages 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

B. In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

C. At a minimum the data relied on to make a determination must include: (i) evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); (ii) evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and (iii) functional assessment (activities of daily living).

D. Based on the data compiled, the MH/MRA must determine whether an NF level of services is needed.

§ 11. Evaluating whether an individual with MI requires specialized services (PASARR/MI).

A. The purpose of this section is to identify the minimum data needs and process requirements for the state MHA, which is responsible for determining whether

or not the applicant or resident with MI needs a specialized services program for mental illness.

B. Minimum data collected must include:

1. A comprehensive history and physical examination of the person. If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions. The following areas must be included (if not previously addressed): complete medical history; review of all body systems; specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and in case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.

2. A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

3. A psychological evaluation of the person, including current living arrangements and medical and support systems.

4. A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

5. A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required. The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

C. The state may designate the mental health professionals who are qualified to perform the evaluations required including the comprehensive drug history; psychosocial evaluation; comprehensive psychiatric evaluation; functional assessment; and to make the determination required.

D. Based on the data compiled, a qualified mental health professional, as designated by the state, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is

needed.

§ 12. Evaluating whether an individual with MR requires specialized services (PASARR/MR).

A. The purpose of this section is to identify the minimum data needs and process requirements for the state MRA to determine whether or not the applicant or resident with mental retardation needs a continuous specialized services program. Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

1. *The individual's medical problems;*

2. *The level of impact these problems have on the individual's independent functioning;*

3. *All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups: hypnotics, antipsychotics (neuroleptics), mood stabilizers and antidepressants, antianxiety-sedative agents, and anti-Parkinsonian agents.*

4. *Self-monitoring of health status;*

5. *Self-administering and scheduling of medical treatments;*

6. *Self-monitoring of nutritional status;*

7. *Self-help development such as toileting, dressing, grooming, and eating;*

8. *Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;*

9. *Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which nonoral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (e.g. hearing aid) or a program of amplification can improve the individual's functional capacity;*

10. *Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;*

11. *Academic/educational development, including functional learning skills;*

12. *Independent living development such as meal preparation, budgeting and personal finances, survival*

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skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bed making, care of clothing, and orientation skills (for individuals with visual impairments);

13. Vocational development, including present vocational skills;

14. Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

15. The presence of identifiable maladaptive or inappropriate (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

B. The state must ensure that a licensed psychologist identifies the intellectual functioning measurement of individuals with MR or a related condition. Based on the data compiled, the MRA, using appropriate personnel as designated by the state, must validate that the individual has MR or is a person with a related condition and must determine whether specialized services for MR are needed. In making this determination, the MHA must make a qualitative judgment on the extent to which the person's status reflects, singly and collectively, the characteristics commonly associated with the need for specialized services, including:

1. Inability to take care of most personal care needs; understand simple commands; communicate basic needs and wants; be employed at a productive wage level without systematic long term supervision or support; learn new skills without aggressive and consistent training; apply skills learned in a training situation to other environments or settings without aggressive and consistent training; demonstrate behavior appropriate to the time, situation or place without direct supervision; and make decisions requiring informed consent without extreme difficulty;

2. Demonstration of severe maladaptive behavior(s) that place the person or others in jeopardy to health and safety; and

3. Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

§ 13. Appeals.

A. Following notification to the NF of the Level II assessment determination by the state MH/MRA, the NF must inform the individual of the decision indicating the reasons for acceptance or denial. Any individual, regardless of method of payment, who wishes to appeal the decision of the Level II evaluation may do so by sending written notification to the Department of Medical Assistance Services, Division of Client Appeals.

B. Decisions made by the annual resident review teams shall also be appealable to DMAS. The reviewed individual shall send written notification to DMAS, Division of Client Appeals.

C. All appeal requests must be made within 30 days of the individual's notification of the review decision.

VA.R. Doc. No. R94-723; Filed March 16, 1994, 11:42 a.m.

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**VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
MUMR SUPPLEMENT: LEVEL II**

Name: _____ Screening Placement Recommendation _____

B. This section is to be completed by the Community Services Board or other entity under contract for Level II evaluation process.

1. EVALUATIONS REQUIRED UPON RECEIPT OF REFERRAL (Check evaluations submitted upon receipt of referral) REGISTRATION OF REGULATIONS
CLASS 15 211143

- | | |
|---|---|
| <input type="checkbox"/> Neurological Evaluation | <input type="checkbox"/> Psychosocial/Functional Assessment |
| <input type="checkbox"/> Psychological Assessment | <input type="checkbox"/> History and Physical Examination |
| <input type="checkbox"/> Psychiatric Assessment | <input type="checkbox"/> Other (please specify) _____ |

2. RECOMMENDATION

- Specialized services are not indicated.
- Specialized services are indicated.

Comments:

3. Date referral package received: _____ Date package sent to DAHMRSAS: _____

QMHP Signature (MI diagnosis)	Date	Telephone Number
Psychologist Signature (MR diagnosis)	Date	Telephone Number
Case Manager Signature/Title	Date	Telephone Number
Agency/Facility Name	Agency/Facility ID# (if applicable)	

Mailing Address:

C. THIS SECTION IS TO BE COMPLETED ONLY BY THE THE DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

Date referral package received: _____ Concur with recommendations of specialized services? yes no

Comments:

Copies of referral package sent to:	Representative's Name:	Date Package Sent:
<input type="checkbox"/> PAS representative	_____	_____
<input type="checkbox"/> Community Services Board	_____	_____
<input type="checkbox"/> Admitting/receiving nursing facility	_____	_____
<input type="checkbox"/> Discharging hospital (if applicable)	_____	_____
<input type="checkbox"/> Individual being evaluated*	_____	_____
<input type="checkbox"/> Individual's family	_____	_____
<input type="checkbox"/> Individual's legal representative (if any)*	_____	_____
<input type="checkbox"/> Attending physician	_____	_____

*Appeals information included.

Signature of State MUMRA	Title	Date	Telephone Number
MUMR Supplement (Revised 11/93) Page 2			

BOARD OF PROFESSIONAL COUNSELORS

Title of Regulation: VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.

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

Effective Date: May 4, 1994.

Summary:

The final regulations establish fee requirements for examination candidates and for renewal of certification to practice as substance abuse counselors in the Commonwealth of Virginia. The examination fees have been increased to reflect the direct cost to the candidate from the examination service.

The regulations require the candidate to submit applications for review 90 days prior to the examination which is a 30-day increase to allow adequate time for the examination service to schedule candidates.

The renewal fees reflect a decrease in cost to the certified substance abuse counselor from \$50 annually to \$40 for the annual renewal.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 West Broad Street, Richmond, Virginia 23230-1717, telephone (804) 662-7328. There may be a charge for copies.

VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor.

"Appropriately credentialed authority" means an entity licensed by an agency of the Commonwealth to render the services of substance abuse counselors.

"Board" means the Virginia Board of Professional Counselors.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Didactic" means teaching-learning methods which impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and
2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in §§ 2.1 [A C] and 2.3 D of these regulations.

§ 1.2. Cross-referencing.

These regulations are incorporated by reference in VR 560-01-02 Regulations Governing the Practice of Professional Counseling.

§ 1.3. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors:

Registration of supervision	\$ 25
Application processing	50
Examination	100 120
Reexamination	100
Certification renewal	50 40
Duplicate certificate	15
Late renewal	10
Replacement of or additional wall	

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certificate	15
Name change	10
Returned check	15

~~B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors. Fees shall be paid by check or money order.~~

Examination fees shall be made payable to the examination service and mailed directly to the examination service.

All other fees shall be made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors.

PART II. REQUIREMENTS FOR CERTIFICATION.

§ 2.1. Certification, general.

[~~A.~~] No person shall use the title of "certified substance abuse counselor" in the Commonwealth of Virginia except as provided in these regulations.

[~~A. 1.~~ ~~B.~~] A certified substance abuse counselor is employed to deliver substance abuse counseling in a state-approved public or private facility.

[~~2.~~ ~~C.~~] In every instance there shall be an identifiable appropriately credentialed individual or authority to provide supervision.

[~~B.~~ ~~D.~~] A candidate for certification as a substance abuse counselor shall meet all the requirements of these regulations, including passing the examination prescribed in § 3.1 General examination requirements.

[~~C.~~ ~~E.~~] Prerequisite to examination.

Every prospective applicant for examination for certification by the board shall:

1. Meet the educational requirements prescribed in § 2.2 of these regulations;
2. Register supervision with the board at least one year before applying, using the appropriate form and paying the fees prescribed by the board. The board, in its discretion, may waive this one-year period for an applicant who has met the work experience requirements prescribed in § 2.3;
3. Meet the experience requirements prescribed in § 2.3;
4. Meet the requirements of character and professional integrity prescribed in [~~§ 2.4~~ § 2.5]; and
5. Submit to the executive director of the board, at

least ~~60~~ 90 days prior to the date of the written examination:

- a. A completed application form;
- b. Documented evidence of having fulfilled the education, supervision, experience, and references required in subdivisions 1, 2, 3, and 4 of this subsection;
- c. Reference letters from three health or mental health care professionals attesting to the applicant's character and professional integrity; and
- d. The examination fee prescribed in § 1.3 of these regulations.

[~~D.~~ ~~F.~~] Every applicant for examination shall take the examination at the time prescribed by the board.

[~~E.~~ ~~G.~~] The board may certify by endorsement an individual who is currently certified in another state as a substance abuse counselor and who has been certified in another state through a similar process with equivalent requirements as described in this section.

§ 2.2. Educational requirements.

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have an official high school diploma or general educational development (GED) certificate; and
2. Have completed 400 clock hours of substance abuse education from one of the following programs:
 - a. An accredited university or college;
 - b. An integrated program approved by the board; or
 - c. An individualized program of seminars and workshops to be approved by the board at the time of application.

B. Substance abuse education.

1. The education will include 220 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following six areas:
 - a. Understanding the dynamics of human behavior;
 - b. Signs and symptoms of substance abuse;
 - c. Counseling and treatment approaches, substance abuse research, group therapy, and other adjunctive treatment and recovery support groups;

- d. Continuum of care and case management skills;
- e. Recovery process and relapse prevention methods;
- f. Ethics and professional identity.

2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:

- a. Screening clients to determine eligibility and appropriateness for admission to a particular program.
- b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program.
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client.
- d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan.
- e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes.
- f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives.
- g. Case management activities which bring services, agencies, people and resources together in a planned framework of action to achieve established goals.
- h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress.
- i. Education of clients by providing information about drug abuse and available services and resources.
- j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources.
- k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client-related data.
- l. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program will not be accepted as any part of the educational experience.

§ 2.3. Experience requirements.

A. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.

B. The work experience shall be supervised by a board approved licensed professional or certified substance abuse counselor. In every instance there shall be an identifiable appropriately credentialed individual or authority to provide supervision.

C. The supervised experience shall include at least two hours per week of face-to-face consultation between the supervisor and the applicant.

D. Supervision shall be provided under this section according to the following requirements:

1. The supervision contract provided by the board shall be completed and signed by the applicant and the supervisor.
2. The supervisor shall assume responsibility for the professional activities of the applicant.
3. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.
4. The supervisor shall provide supervision only for those substance abuse counseling services which he is qualified to render.
5. Group supervision involving up to six members in a group will be acceptable for one hour of the two hours per week of supervision required in subsection C of this section, substituting on the basis of two hours of group supervision equaling one hour of individual supervision. In no case shall a person receiving supervision receive less than one hour of face-to-face individual supervision per week.
6. Supervision must be provided by a professional who has had specialized training or experience in substance abuse counseling or a certified substance abuse counselor approved by the board.
7. A board approved supervisor shall:
 - a. Be a licensed professional counselor, licensed clinical psychologist, licensed psychologist, licensed clinical social worker, medical doctor, or registered nurse with a minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in § 2.2

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B 1 a through f; or

b. Be a substance abuse counselor certified by the board who has:

(1) Board recognized national certification in substance abuse counseling; and

(2) Has two years experience as a board certified substance abuse counselor.

8. At the time of formal application for certification, the board approved supervisor shall document for the board the applicant's total hours of supervision, length of work experience, competence in substance abuse counseling and any needs for additional supervision or training.

9. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

10. The applicant shall keep the board informed of his current supervisor's license or certificate number, business address, and phone number. The board shall be informed within 30 days of any changes in the applicant's supervision.

§ 2.4. Documentation of supervision.

Applicants must document successful completion of their supervised experience on appropriate forms at the time of application. Supervised experience obtained prior to May 8, 1991, may be accepted towards certification if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

§ 2.5. Character and professional integrity.

If the applicant has been under treatment for substance abuse within the last four years, the applicant shall provide a written statement from the certified or licensed individual responsible for the treatment. The written statement shall address the capability of the applicant to assume the responsibilities of a certified substance abuse counselor.

PART III. EXAMINATIONS.

§ 3.1. General examination requirements.

A. Every applicant for certification as a substance abuse counselor shall take a written examination approved by the board and achieve a passing score as defined by the board.

B. A written examination will be given at least once each year. The board may schedule such additional examinations as it deems necessary.

1. The executive director of the board shall notify all applicants in writing of the time and place of the examination for which they have been approved to sit.

~~2. If the applicant fails to appear for the examination without providing written notice at least one week before the examination, the examination fee shall be forfeited.~~

~~3. 2.~~ The executive director will notify all applicants in writing of their success or failure on any examination.

~~4. 3.~~ The applicant shall submit the applicable fees as prescribed in § 1.3.

§ 3.2. Written examination.

The written examination shall consist of objective, multiple-choice, or essay questions.

PART IV. RENEWAL AND REINSTATEMENT.

§ 4.1. Annual renewal of certificate.

Every certificate issued by the board shall expire on June 30 of each year.

A. Along with the renewal application, the certified substance abuse counselor shall submit the renewal fee prescribed in § 1.3.

B. Failure to receive a renewal notice and application form(s) shall not excuse the certified substance abuse counselor from the renewal requirement.

§ 4.2. Reinstatement.

A. A person whose certificate has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.

B. A person who fails to renew a certificate for four years or more shall:

1. Pay the late renewal fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.

2. Provide evidence satisfactory to the board of current ability to practice as evidenced by:

a. Continuous practice of substance abuse counseling during the preceding two years and completion of 20 hours of continuing education in substance abuse counseling per year for the preceding two years, or

b. Completing at least 40 hours of substance abuse education in the preceding 12 months.

§ 4.3. Legal name change.

A certified substance abuse counselor whose name is changed by marriage or court order may:

1. Notify the board of such change and provide a copy of the legal paper documenting the change.
2. Pay the "name change" fee prescribed in § 1.3.
3. Request and obtain from the board a new certificate bearing the individual's new legal name and pay the fee prescribed in § 1.3.

PART V. STANDARDS OF PRACTICE; DISCIPLINARY ACTIONS; REINSTATEMENT.

§ 5.1. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

1. A certified substance abuse counselor is employed to deliver substance abuse counseling in a state-approved public or private facility.
2. In every instance there shall be an identifiable individual or authority that is appropriately credentialed to provide supervision.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.
3. Practice only within the competency area for which they are qualified by training or experience.
4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors.
5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.
6. Keep confidential their counseling relationships with clients, except: (i) when the client is a danger to self or others; and (ii) when the counselor is under court order to disclose information.
7. Disclose counseling records to others only with written consent of the client.

8. Not engage in dual relationships with clients, former clients, supervisees and supervisors that are harmful to the client's, former client's, or supervisee's well being, or which would impair the substance abuse counselor's or supervisor's objectivity and professional judgment, or increase the risk of client or supervisee exploitation. This prohibition includes, but is not limited to, such activities as counseling close friends, employees or relatives; or engaging in sexual intimacies with clients, supervisees, or supervisors.

§ 5.2. Grounds for revocation, suspension, probation, reprimand, censure or denial of renewal of certificate; petition for rehearing.

A. In accordance with § 54.1-2400(7) of the Code of Virginia, the board may revoke, suspend or decline to renew a certificate based upon the following conduct:

1. Conviction of a felony or misdemeanor involving moral turpitude.
2. Procuring a certificate by fraud or misrepresentation.
3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public; or if one is unable to practice substance abuse counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.
4. Negligence in professional conduct or nonconformance with the standards of practice outlined in § 5.1 B of these regulations.
5. Performance of functions outside the board-certified area of competency.
6. Violation of or aid to another in violating any provision of Chapter 35 of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of the profession regulated, or any provision of these regulations.

B. Petition for rehearing.

A petition may be made to the board for a rehearing upon good cause shown or as a result of substantial new evidence having been obtained which would alter the determination reached in subsection A of this section.

§ 5.3. Reinstatement following disciplinary action.

A. Any person whose certificate has been revoked or denied renewal by the board under the provisions of § 5.2 must submit a new application for certification to the board.

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B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. The applicant for such reinstatement, if approved, shall be certified upon payment of the appropriate fees applicable at the time of reinstatement.

NOTICE: The forms used in administering the Regulations Governing the Certification of Substance Abuse Counselors are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Professional Counselors, 6606 W. Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Application for Certification as a Substance Abuse Counselor

Registration of Supervision for Substance Abuse Counselor Certification

Substance Abuse Counselor Verification of Supervision

VA.R. Doc. No. R94-703; Filed March 15, 1994, 4:39 p.m.

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.

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

Effective Date: July 1, 1994.

Summary:

This regulation clarifies the application of the retail sales and use tax to purchases and sales by adult care residences and adult day care centers. The tax status of purchases by such entities was previously set forth in VR 630-10-47 relating to hospitals and nursing homes.

The final regulation differs from the proposed regulation published in the November 15, 1993, issue of The Virginia Register of Regulations in that it clarifies that charges for the care and maintenance of persons by adult care residences and adult day care centers, and that meals, the charges for which are included in the charges for care and maintenance, are not taxable. It also clarifies that meals for which separate charges are made to residents or day care attendees are taxable.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.

§ 1. Definitions.

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

“Adult care residence” means an adult care residence often referred to as a “home for adults” and defined in § 63.1-172 of the Code of Virginia as any public or private place, establishment, or institution operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an education program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

“Adult day care center” means an adult day care center as defined in § 63.1-194.1 of the Code of Virginia as a facility which provides supplementary care and protection during part of the day only to four or more aged, infirm, or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage.

§ 2. Generally.

Purchases of tangible personal property by nonprofit adult care residences and nonprofit adult day care centers licensed by the Department of Social Services are exempt from the tax. Purchases of tangible personal property by all other adult care residences and adult day care centers, whether conducted for profit or not, are taxable unless otherwise exempt. If a vendor fails to collect the tax from

a nonexempt entity, the entity must remit the tax to the department as provided in VR 630-10-109.

Any adult care residence or adult day care center, whether for profit or nonprofit, which engages in selling tangible personal property shall register as a dealer and collect and remit the tax to the department. For example, sales of meals [to residents or day care attendees for which a separate charge is made and] to nonresidents are taxable. [However, meals furnished in connection with services provided in caring for persons and the cost price of which are included as a part of the charge for such services are nontaxable.] Purchases of tangible personal property for subsequent resale may be made exempt from the tax under a certificate of exemption, Form ST-10.

[Charges for the care and maintenance of persons by adult care residences and adult day care centers are not taxable.]

VA.R. Doc. No. R94-713; Filed March 16, 1994, 10:26 a.m.

Title of Regulation: VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to agricultural and seafood processors and to be crafted into the standard regulation form required by the Virginia Register, Form, Style and Procedure Manual.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.

The tax does not apply to any agricultural commodity or seafood sold to any person for the purpose of preparing, finishing or manufacturing an agricultural or seafood commodity for sale. Agricultural or seafood commodities sold at retail are subject to the tax. The term "agricultural commodity" means horticultural, poultry and farm

products, and livestock and livestock products. For manufacturing, processing etc., see § 630-10-63. Section revised 1/79.

§ 1. Definitions.

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

"Agricultural commodity" means crops, horticultural products, poultry, livestock, livestock products, worms, and other farm products produced from an agricultural production process as determined in VR 630-10-4.

"Seafood commodity" means fish and other seafood [produced from an agricultural production process as determined in VR 630-10-4] .

§ 2. Generally.

The sale of an agricultural commodity or seafood commodity to any person for the purpose of preparing, finishing, or manufacturing such commodity for sale is exempt from the tax. The sale at retail of the prepared, finished, or manufactured agricultural or seafood commodity is taxable.

VA.R. Doc. No. R94-709; Filed March 16, 1994, 10:26 a.m.

Title of Regulation: VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify that the retail sales and use tax is not applicable to the sale, lease, or rental of aircraft provided the aircraft is subject to the aircraft sales and use tax under Chapter 15 of Title 58.1 of the Code of Virginia. This regulation also sets forth the application of the sales and use tax to repair and replacement parts and accessories for aircraft, which is governed by the time of installation and the use of the aircraft by the owner. Maintenance materials such as oil, grease, soaps, cleaners, etc., used on aircraft are subject to the retail sales and use tax.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street,

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Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials.

§ 1. Definitions.

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

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than 24 inches above the ground. Such term shall not include parachutes.

"Aircraft sales tax" means the tax imposed under Chapter 15 (§ 58.1-1500 et seq.) of Title 58.1 of the Code of Virginia.

"Dealer" means any person owning and placing five or more aircraft for resale during a calendar year who the Tax Commissioner finds to be in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § 58.1-1503 of the Code of Virginia exceeds the charge actually made.

"Sales price" means the total amount paid for an aircraft and all attachments thereon and accessories thereto, without any allowance or deduction for trade-ins or unpaid liens or encumbrances, but exclusive of any federal manufacturers' excise tax.

A. § 2. Generally.

The sale, lease or rental (including charters) of aircraft is not subject to the retail sales and use tax ~~when~~ provided such transaction is subject to the Virginia aircraft sales and use tax as set forth under Chapter 15 (§ 58.1-1500 et seq.) of Title 58.1 of the Code of Virginia .

B. Aircraft defined.

For the purpose of this regulation, the word "aircraft" shall mean any contrivance used or designed for untethered navigation of or flight in the air carrying one or more persons at an altitude greater than 24 inches above the ground and any other device described in Va. Code § 58.1-1501.

C. § 3. Repair and replacement parts used on aircraft sold, leased or rented.

Repair and replacement parts and accessories installed on an aircraft at the time of sale ~~that~~ , which are included in the sale price for *the purpose of* computing the aircraft sales and use tax , are exempt from the retail sales and use tax. Such parts and accessories are also exempt from the retail sales and use tax when installed on leased or rented aircraft when such aircraft are subject to the aircraft sales and use tax based upon gross receipts. These items may be purchased by a dealer ; ~~as defined in Va. Code § 58.1-1501~~ exclusive of the retail sales and use tax when a resale exemption certificate, Form ST-10, is presented to *the retailer* at the time of sale.

The retail sales and use tax is applicable to ~~such items~~ ~~through~~ repair and replacement parts and accessories when an aircraft dealer elects to remit the aircraft sales and use tax upon his purchase of an aircraft rather than upon the gross receipts derived from the lease, charter , or other use of the aircraft. Likewise, purchases of such items by individual aircraft owners or nondealers are subject to the retail sales and use tax.

D. § 4. Maintenance materials.

Maintenance materials such as oil, grease, soaps, cleaners, etc. used on aircraft are subject to the retail sales and use tax. See the Virginia Aircraft Sales and Use Tax Regulations for information relating to the aircraft sales and use tax generally. ~~Section revised 7/69; 1/79; 1/85.~~

VA.R. Doc. No. R94-710; Filed March 16, 1993, 10:26 a.m.

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Title of Regulation: VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to a commercial waterman's purchase of equipment and supplies for use in his commercial fishing activity, to incorporate a legislative change, and to be crafted into the standard regulation form required by the Virginia Register, Form, Style, and Procedure Manual.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.

§ 1. Definitions.

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

"Boat" means any vessel used for marine transportation other than a watercraft as defined in § 58.1-1401 of the Code of Virginia.

"Commercial fishing activity" means the business of extracting fish, bivalves, or crustaceans from waters for sales or resale.

"Commercial waterman" or "commercial watermen" means a person or persons who regularly engage in a commercial fishing activity.

"Directly used" means those items that are both indispensable to a commercial fishing activity and which are used immediately in the commercial fishing activity.

A. § 2. Generally.

The tax does not apply to A commercial waterman's purchase of a boat, motor, machinery, tools, repair parts, fuel, or supplies purchased by commercial watermen, including, but not limited to, paint or other materials used to recondition a boat, for use in extracting fish, bivalves or crustaceans from waters a commercial fishing activity is exempt from the tax. For purposes of this exemption, the terms "machinery, tools, repair parts, fuel or supplies" does not include the boat itself or supplies used to paint or condition the boat.

B. Following is a listing of items which may be purchased exempt from the tax by commercial watermen as well as those items which are subject to the tax. This listing is intended to be exemplary and is not all inclusive.

1. The following items are exempt when purchased and used by commercial watermen in extracting seafood from waters for commercial purposes:

§ 3. Typical exempt items; direct use; taxable use; dual use of equipment.

A. A commercial waterman's purchase of the following items will not be subject to the tax if directly used in the commercial fishing operation:

1. Anchors ;
2. Bait ;
3. Bilge pump ;
4. Boat and boat motors;

5. Boat rudder and stock ;
6. Boat steering gear ;
7. Boat hook ;
8. Boom and gaff on commercial fishing vessel ;
9. Compass ;
10. Crab-pot rope and wire ;
11. Depth finder ;
12. Dredge and equipment including all deck and components and repairs thereof ;
13. Drive shaft and propeller ;
14. Engines and other equipment;
15. Floats for net or crab-pot ;
16. Foul-weather clothing worn while extracting seafood from waters ;
17. Fuel ;
18. Gas tanks ;
19. Gill net and all types of nets for extracting seafood ;
20. Hand tools used in extracting seafood ;
21. Ice for preserving seafood or bait ;
22. Inboard and outboard motors ;
23. Nails, screws and bolts used on any seafood extracting equipment except the boat itself ;
24. Oyster tubs and baskets ;
25. Nets and twine;
26. Paint for nets, twine, engines, or any other equipment used in extracting seafood boats;
27. Poles and stakes used in setting nets and marking ground for seafood ;
28. Power block and accessories ;
29. Pulley for deck rig or net rigs ;
30. Repair parts for exempt equipment ;
31. Rope or twine, including wire cable, or chain for boat, net or dredge rig used by commercial watermen who to extract seafood ;

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32. Rudder and shaft zincs ;
33. Running lights and deck lights ;
34. Shovels for handling seafood in the catching process ;
35. Sonar equipment to locate fish, bivalves, or crustaceans;
36. Ship-to-shore radios, radar equipment, and other related accessories which are permanently affixed to a boat and become an integral part thereof;
37. Tools such as knives, shovels, etc., used directly in a commercial fishing activity;
38. Trawl doors ; and
39. Any other tangible personal property purchased for exclusive use in extracting seafood from waters for commercial purposes.

Any items listed above which are attached to and a part of the boat at the time of sale, including the motor, are a part of the sales price of the boat and are subject to the watercraft or retail sales and use tax, whichever is applicable, at the time the boat is purchased.

B. A commercial waterman must directly use a boat, motor, machinery, tools, repair parts, fuel, or supplies in a commercial fishing activity, otherwise the purchase is taxable.

Example. A commercial waterman purchases a boat which he will use to transport both himself and his crew to his fishing vessel which is anchored in the harbor. The commercial waterman uses the boat for transportation purposes only and not for commercial fishing. Since the commercial waterman does not use the boat directly in his commercial fishing operation, the boat will be taxable.

C. A commercial waterman's purchase of an item, which is typically exempt from the tax since it is usually used directly in a commercial fishing operation, for use in a nonexempt manner, is taxable.

Example. A commercial waterman purchases paint to repaint a boat he uses for recreational purposes. Since the commercial waterman uses the boat in a taxable manner, the purchase of the paint is taxable. Had the commercial waterman purchased the paint to repaint the boat he uses in his commercial fishing operation, the purchase would have been exempt from the tax.

D. A commercial waterman's use of supplies or equipment in both an exempt activity and a taxable activity will result in such items being taxable unless he can accurately determine the percentage of use of such

items in the commercial fishing activity as compared to his use of the items in a taxable activity. In such case, the commercial waterman can prorate the tax due on the supplies or equipment based upon his percentage of use of such items in the taxable activity.

2. The following items are subject to the tax even when purchased by commercial watermen:

§ 4. Typical nonexempt items.

A commercial waterman's purchase of the following items is taxable since they are not directly used in commercial fishing activities:

1. Boat marking letters ;
2. Cooking utensils ;
3. Deck brooms ;
4. Fuel for cooking or space heating aboard vessels ;
5. Flashlight and batteries ;
6. Hand held radios and other communication devices not permanently affixed to a boat;
7. Life preservers ;
8. Maps ;
9. Tools used in making repairs to boats
Paint used directly on the boat
10. Ship-to-shore radios and accessories
9. Tools used for repairs to repair equipment ;
Vessels and boats, including repairs thereof
10. Any other tangible personal property purchased for family or personal use or not purchased for use in extracting seafood from waters for commercial purposes .

6. § 5. Watercraft sales and use tax. Effective January 1, 1982, certain boats are subject to the 2% watercraft sales and use tax. For further information, see Virginia Watercraft Sales and Use Tax Regulations: Section added 1/79; section revised 1/85.

Certain vessels are subject to the watercraft sales and use tax despite the fact that they may be exempt from the retail sales and use tax pursuant to this regulation. See Chapter 14 (§ 58.1-1400 et seq.) of Title 58.1 of the Code of Virginia and the regulations thereunder.

V.A.R. Doc. No. R94-711; Filed March 16, 1994, 10:26 a.m.

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Title of Regulation: VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify that the retail sales and use tax is applicable to containers, packaging materials, and transportation devices, ownership of which remains with the seller. Containers, packaging materials, and transportation devices the ownership of which passes to the customer may be purchased tax exempt as a purchase for resale. Equipment used in packaging which remains the property of the seller is also taxable.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment.

A. Packaging materials: § 1. Definitions.

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

"Packaging materials" means items which are used to package products for sale and which become the property of the purchaser subsequent to the sale. Examples of such items are containers, labels, sacks, cans, boxes, drums, and other similar items.

"Transportation devices" means items which are used to transport and protect products for sale and to restrain product movement in a single plane of direction. Examples of such items are pallets, dunnage, strapping and similar materials used to brace or secure cargo for transport.

§ 2. Exempt uses.

Packaging materials, such as containers, labels, sacks, cans, boxes, drums, bags and other similar items may be purchased tax exempt by wholesalers and retailers as purchases for resale, if the items are marketed with the product being sold and become the property of the purchaser. Packaging materials which do not become the

property of the purchaser are subject to the tax.

Packaging material may be purchased exempt by industrial manufacturers, processors or miners, regardless of whether they are returnable or nonreturnable (see VR 630-10-63).

Pallets, dunnage, strapping and similar materials used to brace or secure cargo for transport and restrain product movement in a single plane of direction. Transportation devices are not packaging materials and may not be purchased tax exempt unless purchased for resale. Persons who provide packaging services must pay the tax at the time of purchase on pallets, dunnage, which are used in providing the service and are not resold to a customer.

§ 3. Taxable uses.

Packaging materials and transportation devices, the ownership of which remains with the seller and does not pass to the customer are taxable. Persons who provide packaging and transportation services must pay the tax on all material used in providing such services unless the materials are resold to a customer and no transportation services are provided therewith.

B: § 4. Equipment.

The tax applies to the purchase of equipment for use in the operation of a business even though such equipment may be used in connection with the shipment or sale of tangible personal property. Examples of property which is subject to the tax are truck bodies and trailers, tank and freight cars, containerized cargo, shopping carts and baskets, crates, dispensers, dishes, beverage glasses, and similar articles which are not resold and do not become the property of the purchaser.

For industrial manufacturers and processors, see § 630 10 63; for advertising materials, see § 630 10 18.1. Section revised 1/79; 1/85.

V.A.R. Doc. No. R94-712; Filed March 16, 1994, 10:26 a.m.

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Title of Regulation: VR 630-10-39. Retail Sales and Use Tax: Federal Areas (REPEALED).

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

Effective Date: July 1, 1994.

Summary:

The provisions of this regulation have been incorporated into VR 630-10-45 which deals with governments generally and thus this regulation has been repealed.

Summary of Public Comment and Agency Response: No

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public comment was received by the promulgating agency.

Agency Contact: J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010.

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Title of Regulation: VR 630-10-39.2. Retail Sales and Use Tax: Flags (REPEALED).

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

Effective Date: July 1, 1994.

Summary:

The provisions of this regulation have been incorporated into VR 630-10-45 which deals with governments generally and thus this regulation has been repealed.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010.

VA.R. Doc. No. R94-714; Filed March 16, 1994, 10:27 a.m.

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Title of Regulation: VR 630-10-45. Retail Sales and Use Tax: Governments.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify existing department policy with respect to purchases and sales by the Commonwealth and its political subdivisions, and the federal government. Particularly, it clarifies that while the federal government is not required to collect the sales tax on sales of tangible personal property, those purchasing personal property from it are required to remit use tax to the department on such purchases. The regulation also clarifies the department's position with respect to purchases of meals and lodging by governmental employees and the use of government credit cards — meals and lodging purchased by the state, regardless of whether the purchases are made pursuant to required official purchase orders, are taxable. However, meals and lodging purchased by the federal government or its employees traveling on government business are exempt from the tax only when payment for such meals, lodging or other accommodations is made

directly by the federal government pursuant to an official purchase order and paid for out of federal funds.

The provisions of two related regulations dealing with sales of flags by governments and sales generally in federal areas have been incorporated into this regulation.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-45. Retail Sales and Use Tax: Governments.

**PART I.
SALES TO GOVERNMENTS.**

A. Federal government § 1.1. Generally.

The tax does not apply to sales Sales to the United States, or to the Commonwealth of Virginia or its political subdivisions, are exempt from the tax if the purchases are pursuant to required official purchase orders to be paid out of public funds. The tax applies when such sales are Sales made without the required purchase orders and are not paid for out of public funds are taxable. Sales to governmental employees for their own consumption or use in carrying out official government business are taxable. For example, if a federal employee traveling on government business and

§ 1.2. Meals, lodging and other accommodations.

A. Charges for meals, catered events, lodging, and other accommodations, such as meeting or conference rooms, are subject to the tax when paid for by the state or local government or public institutions of learning, or employees of such, regardless of whether the purchases are made pursuant to required official purchase orders. Room setup charges in connection with the rental of rooms or conference rooms are also taxable. Setup charges not in connection with room rentals are not subject to the tax.

B. Purchases of meals, lodging, and other accommodations, by the federal government or its employees traveling on government business are exempt from the tax provided payment for the meals or , lodging , or other accommodations is made directly by the federal government pursuant to a an official purchase order (e.g., by direct billing to government or use of government credit card) ; no tax will apply . Only credit car,

purchases for which the credit of the federal government is bound and billings are sent directly to and paid by the government, are exempt from the tax. For example, I.M.P.A.C. cards which have been identified as a United States government credit card and which can be used only for making purchases for official government purposes may be used to make exempt purchases, provided the credit card bill will be paid directly by the federal government.

However, if an employee pays for the meals and lodgings with personal funds, a personal credit card or a credit card provided by the government, the bill for which is sent directly to the employee, and will be reimbursed by the government or utilizes a travel advance, no exemption is available even though the employee may be traveling pursuant to official government orders or the credit card used has the governmental agency's name embossed thereon.

The tax does not apply to sales to or by officers' clubs, noncommissioned officers' clubs, officers' messes, noncommissioned officers' messes, and post exchanges organized, operated and controlled under Department of Defense regulations. The exemption does not cover individuals or organizations operating on a military reservation in their own right. No person is relieved from liability for payment of, collection of, or accounting for the tax on the ground that the sale or use occurred in whole or in part within a federal area. (See § 630-10-39)

B. § 1.3. Federal credit union unions.

The tax does not apply to sales to federally chartered credit unions are exempt from the tax (12 USCA 1768).

C. § 1.4. Privately owned financial and other privately owned similar corporations chartered by the United States.

Privately owned financial and similar corporations chartered by the United States, such as commercial banks and federal savings banks, are not instrumentalities of the U.S. United States and do not qualify for an exemption. Thus, sales and leases to these corporations are subject to the tax.

D. State government and political subdivisions of Virginia:

1. Purchases:

The tax does not apply to sales to the Commonwealth of Virginia or to its political subdivisions, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds.

No exemption is provided for state or local

government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not.

PART II. SALES BY GOVERNMENTS.

2. § 2.1. Generally.

Except as provided in this section, sales by the state, its agencies and political subdivisions generally are taxable.

Since the obligation to collect the tax cannot be imposed upon the federal government, purchases of tangible personal property from the federal government or its agencies, are subject to the use tax, except as provided in this section and § 3.1 or unless the items are otherwise exempt. Purchases from the state and local governments are subject to the use tax where the state agency or locality does not collect the sales tax from the purchaser. See VR 630-10-107 for a further explanation of the use tax.

Any state agency or locality making sales of tangible personal property not otherwise exempt shall register as a dealer with the department and collect and remit the sales tax on its sales. Any agency or locality collecting the tax shall be entitled to the dealer's discount. See VR 630-10-31.

§ 2.2. Exempt sales.

The tax does not apply to sales of alcoholic beverages by the Virginia Alcoholic Beverage Control Commission; nor to sales of A. Sales by the state, its agencies, or political subdivisions of the following are exempt from the tax:

1. School lunches served to pupils and employees of schools and subsidized by any level of government; nor to

2. sales of School textbooks by a local school board or authorized agency; nor to sales of school textbooks, or by state educational institutions at any level for use of students attending such educational institutions; nor to sales of the official flag of the United States, Commonwealth of Virginia or any political subdivision of Virginia by a governmental agency.

3. The provision of Copies of official documents or records by the State, its agencies, and political subdivisions does not constitute a retail sale subject to the sales tax. Consequently, charges for these copies will not be subject to the sales tax. Additionally, State and local government units are not liable for use tax on materials purchased for use in making such copies. Examples of document or record copies which are not subject to the tax when provided by a government agency are such as:

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- (1) copies of *a.* A Certificate in Good Standing;
- (2) copies of *b.* Corporate charters;
- (3) copies of *c.* Birth and death certificates;
- (4) copies of *d.* Executor qualification certificates;
- (5) copies of *e.* Jury lists, proceedings and debates, calendars of events, transcripts, and wills;
- (6) copies of *f.* Driving records and accident reports; and
- (7) copies of *g.* Photos, summonses, and offense reports.

The above list is intended to be exemplary and not all inclusive.

B. Materials provided by the State Board of Elections pursuant to [subdivisions (8), (9), and (10) of § 24.1-23 §§ 24.2-404 and 24.2-405] of the Code of Virginia are exempt from the tax.

C. Official flags of the United States, the state or any county, city or town in Virginia sold by a governmental agency are exempt from the tax.

§ 2.3. Taxable sales.

The provision, for a charge, of books, Sales of the following items of tangible personal property by the state, its agencies and political subdivisions, and the United States, are taxable:

1. Books, publications, and similar documents ; does constitute a retail sale of tangible personal property and is subject to the tax. Any agency making such sales must register as a dealer with this department and collect the 4% sales tax on the sales. Examples of documents or publications which are subject to the sales tax are including, but not limited to :

- (1) *a.* Copies or excerpts from any portion of the Code of Virginia;
- (2) *b.* Copies of building codes or similar rules;
- (3) *c.* Copies of books, monographs, or similar publications; and
- (4) *d.* Copies of regulations.

All other sales by the state and its political subdivisions are taxable unless otherwise exempt and agencies and political subdivisions making such sales are required to register for collection of the tax.

2. Sales of surplus furniture, office equipment, and other items.

3. Sales by sheriffs and other law-enforcement officials of confiscated and other items.

4. Bankruptcy liquidation sales which do not constitute exempt occasional sales as explained in VR 630-10-75.

PART III.

SALES WITHIN FEDERAL AREAS.

§ 3.1. Officers' clubs and similar entities.

Sales to or by officers' clubs, noncommissioned officers' clubs, officers' messes, noncommissioned officers' messes, and post exchanges organized, operated and controlled under Department of Defense regulations are not subject to the tax. The use tax does not apply to persons who make purchases for their personal use from such entities.

§ 3.2. Private concessionaires.

All retail sales made by private concessionaires within a federal area are subject to the tax to the same extent it applies to retail sales elsewhere in the state.

PART IV.

GOVERNMENT CONTRACTORS.

E. § 4.1. Government contractors.

Persons who contract with the federal government, the State or its political subdivisions to perform a service and in conjunction therewith furnish some tangible personal property are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This is true. The appropriate tax treatment of purchases of tangible personal property by persons who contract with the federal government, the state or its political subdivisions, is based upon whether the contract is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., facilities management or real property construction). If a contract is for the sale of tangible personal property, a contractor may purchase such tangible personal property exempt from the tax using a resale exemption certificate, Form ST-10. The tangible personal property may be resold to the government exempt of the tax.

However, if a contract is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government, or both. The same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.

See VR 630-10-27 for further explanation of the tax.

treatment of government contractors.

PART V. DIPLOMATIC EXEMPTION.

F. § 5.1. Diplomatic exemption.

Pursuant to the provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, no sales or use tax is applicable to sales to or purchases by certain foreign diplomats or missions. Persons who are entitled to this exemption are issued numbered diplomatic exemption cards by the U.S. State Department bearing the name and photograph of the person to whom the card is issued. Exemption cards are issued by the United States Department of State and bear a photograph and name of the diplomat eligible for exemption in the case of individual diplomat cards, and, in the case of mission cards, the person entitled to make official purchases for the mission. The extent to which an individual or mission is exempt from the tax is illustrated on the face of the card. In order to qualify for exemption, the purchase must be made by the person to whom the card is issued. No exemption certificate is required; however, the record of the sale must indicate the exemption card number of the purchaser.

For construction contractors, see § 630-10-27; for sales of flags, see § 630-10-39.2. Section revised 11/79; 8/82; 11/85.

V.A.R. Doc. No. R94-721; Filed March 16, 1994, 10:27 a.m.

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Title of Regulation: VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.

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

Effective Date: July 1, 1994.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to a harvester of forest products purchase of equipment and supplies for use in his harvesting activity and to be crafted into the standard regulation form required by the Virginia Register Form, Style and Procedure Manual.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Direct use" or "directly used" means those items that are both indispensable to the harvesting of forest products and which are used immediately in the harvesting of forest products.

"Harvester" means a person who engages in the business of harvesting forest products.

"Harvesting of forest products" means the business of severing products from forests for sale or for use as a component part of a product to be sold.

PART II. A: GENERALLY.

§ 2.1. Exempt items.

The tax does not apply to a harvester's purchase of machinery and tools and their repair parts, fuel, power, energy, or supplies used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold is exempt from the tax. As used in this regulation, the term "used directly" means those activities which are an integral part of the actual harvesting of the forest product including the severing of the product.

§ 2.2. Direct use.

A harvester's direct use of machinery and tools, fuel, power, energy, or supplies in the harvesting of the forest products is exempt from the tax. A harvester's use of machinery and tools, fuel, power, energy, or supplies indirectly in the harvesting of forest products or in any other activity is subject to the tax.

Repair or replacement parts used to repair, restore, or refurbish machinery and tools which are directly used in the harvesting of forest products are also exempt from the tax.

§ 2.3. Clearing activities.

Machinery and tools, etc., used in the clearing of land or construction of roads to open up a logging site, the clearing of trash from the harvesting site, or the transportation of the severed product from the harvesting site are not "used directly" exempt from the tax since such items are not used directly in harvesting forest products.

§ 2.4. Typical exempt items.

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B. Following is a listing of items which may be purchased exempt from the tax by harvesters of forest products and those items which are subject to the tax. This listing is intended to be exemplary and is not all inclusive. The following items may be purchased exempt from the tax by harvesters of forest products. A harvester may purchase the following items exempt of the tax if he uses such items directly in his harvesting activities :

1. Axe ;
2. Bulldozer (Crawler tractor with a rear mounted winch with cables) - if used to pull logs out of the woods ;
3. Cables - if used to pull logs out of the woods ;
4. Chain saw ;
5. Fork lift or lift truck used to move logs at harvesting site ;
6. Hydraulic slasher ;
7. Log cart ;
8. Oil - if used in tractor or other log handling equipment ;
9. Repair parts for machinery and tools used directly in the harvesting of forest products;
10. Saw blades ;
11. Saws ;
12. Shearers ;
13. Skidders ;
14. Tires - if used on bulldozer or tractor to pull logs out of the woods ;
15. Tractor ; and
16. Wedges .

§ 2.5. Typical taxable items.

The following items are subject to the tax even when used by a harvester of forest products:

1. Bulldozer (Crawler tractor with a front mounted blade) when used to open roads into woods for trucks or to clear mill site of trash ;
2. Cables - Cables used to secure logs to a truck for transportation would be taxable ;
3. Fuel tanks ;

4. Grading machine ;
5. Gravel, culverts and similar items used in opening and constructing roads ;
6. Oil - if used in trucks that transport the logs from forest to mill or in equipment used to open roads or remove trash ;
7. Repair parts for licensed and unlicensed trucks ;
8. Repair tools;
9. Tires - if used on vehicles for transporting lumber to mill site ;
10. Trucks (other than licensed vehicles) ; and
11. ~~Welder~~ Welders, and related gases.

§ 2.6. Dual use of equipment.

C. The exemption for items used in both a taxable and an exempt manner shall be prorated based upon the percentage of time used in an exempt manner. Section added 1/79; section revised 1/85. A harvester's use of supplies or equipment in both an exempt activity and a taxable activity will result in such items being subject to the tax unless he can accurately determine the percentage of use of such items or equipment in the harvesting of forest products as compared to his use of the supplies or equipment in a taxable activity. In such case the harvester can prorate the tax due on the supplies or equipment based upon his percentage of use of such items in a taxable activity.

VA.R. Doc. No. R94-720; Filed March 16, 1994, 10:27 a.m.

* * * * *

Title of Regulation: VR 630-10-92. Retail Sales and Use Tax: Research.

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

Effective Date: July 1, 1994.

Summary:

This regulation clarifies the current policy on research. However, additional policy was added in this regulation to allow a person to make de minimis usage of exempt research equipment without losing the research exemption if certain criteria are met.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street,

Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-92. Retail Sales and Use Tax: Research.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Basic research" means a systematic study or search in a scientific or technical field of endeavor with the ultimate goal of advancing knowledge or technology in that field. The development of a tangible product or process need not occur in basic research activities. Examples of basic research activities include medical, chemical, or biological experiments conducted in a laboratory environment.

"Direct use" means those activities which are an integral part of basic research or research and development activities, including all steps of these activities, but not including secondary activities such as administration, general maintenance, product marketing, and other activities collateral to the actual research process.

"Exclusive use" means items are used solely in basic research [and or] research and development activities.

"Experimental sense" means work is conducted through tests, trials, tentative procedures, or policies adopted under controlled conditions to discover, confirm, or disprove something doubtful.

"Laboratory sense" means work is conducted in a place equipped for experimental study in a science and providing an opportunity for experimentation, observation, or practice in a field of basic scientific or traditional physical science research.

"Research" means basic research and research and development as defined in this section.

"Research and development" means a systematic study or search directed toward new knowledge or new understanding of a particular scientific or technical subject and the gradual transformation of this new knowledge or new understanding into a usable product or process. Research and development must have as its ultimate goal: (i) the development of new products; (ii) the improvement of existing products; or (iii) the development of new uses for existing products. Research and development does not include the modification of a product merely to meet customer specifications unless the modification is carried out under experimental or laboratory conditions in order to improve the product generally or develop a new use for the product.

generally or develop a new use for the product.

A. § 1.2. Generally.

The tax does not apply to tangible personal property purchased or leased and used directly and exclusively in basic for research in the experimental or laboratory sense or research and development in the experimental or laboratory sense .

Basic research and research and development do not include testing or inspection of materials or products for quality control; however, in the case of an industrial manufacturer, processor, refiner or converter, this testing and inspection for quality control is deemed to be an exempt activity under § VR 630-10-63. Additionally, basic research and research and development do not include environmental analysis, testing of samples for chemical or other content, operations research, feasibility studies, efficiency surveys, management studies, consumer surveys, economic surveys, research in the social sciences, metaphysical studies, advertising, promotions, or research in connection with literary, historical, or similar projects.

B. Basic research defined. "Basic research" is a systematic study or search in a scientific or technical field of endeavor with the ultimate goal of advancing knowledge or technology in that field. Basic research in the experimental or laboratory sense is such research that is carried on in a laboratory environment or by experimental methods:

The development of a tangible product or process need not be involved in basic research activities. Examples of such exempt research activities include medical, chemical or biological research experiments conducted in a laboratory environment.

C. Research and development defined. "Research and development" is a systematic study or search directed toward new knowledge or new understanding of a particular scientific or technical subject and the gradual transformation of such new knowledge or new understanding into a usable product or process. Research and development in the experimental or laboratory sense should have as its ultimate goal: (1) the development of new products; (2) the improvement of existing products; or (3) the development of new uses for existing products. Research and development in the experimental or laboratory sense is such research that is carried on in a laboratory environment or by experimental methods. Research and development does not include the modification of a product merely to meet customer specifications unless such modification is carried out under experimental or laboratory conditions in order to improve the product generally or develop a new use for the product.

D. Direct and exclusive use defined. The term "used directly" refers to those activities which are an integral

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part of basic research or research and development activities, including all steps of such processes, but not including secondary activities such as administration, general maintenance, product marketing and other activities collateral to the actual research process. The term "used exclusively" refers to items used solely in exempt research activities.

PART II. EXTENT OF THE EXEMPTION.

§ 2.1. Direct and exclusive use.

The exemption is limited in scope to tangible personal property used directly and exclusively in an actual research process, starting with the handling and storage of raw materials and supplies at the research facility and ending after the last step of the research process when the products of the research process are stored at the research facility. Items of tangible personal property used directly and exclusively in research include chemicals, drugs and other materials, equipment, machinery, tools, supplies, energy, fuel, and power used in these processes. An item is not considered used directly and exclusively merely because it is essential to research activities or because its use is required by law.

§ 2.2. Items used in both taxable and exempt research activities.

Items When a single item is used both in exempt and nonexempt activities, are it is not used exclusively in research activities and are subject to the tax is taxable . Therefore, a prorated research exemption of the single item based upon percentages of exempt and nonexempt usage or an exemption based upon the preponderance of an item's use in exempt activities is not permitted under this section .

Example: A company purchases a computer system which is used 90% of the time for research purposes. The remaining 10% of the time, the computer [was is] used to maintain [a general ledger accounting records] and generate monthly financial statements. The computer system is taxable on the full purchase price.

§ 2.3. [De minimus De minimis] usage.

When research property is used in a taxable manner, it will continue to be exempt from the tax if the taxable use is [de minimus de minimis] in nature. Taxable use of the property is considered [de minimus de minimis] if the taxable usage of the property (i) does not involve a continuous or ongoing operation; (ii) does not follow a consistent pattern, i.e., weekly, monthly, quarterly, etc.; (iii) is occasional in nature occurring no more than three times; and (iv) in total, accounts for no more than three days.

Example 1. A company purchases a computer system

which it uses directly for research. However, a management report is generated which addresses the progress of [the a] research [projects project] . It takes two days to generate the report. No other taxable usage was made of the computer. Although the generation of management reports is typically a taxable usage of research equipment, this use of the computer to generate [a] management [reports report] is considered [de minimus de minimis] as it is not a continuous operation, it occurred one time, and took less than three days to complete. Therefore, [although de minimis taxable usage of] the computer system is [considered exclusively used in research and made, it] will [continue to] be exempt from the tax.

Example 2. Facts are the same as Example 1, except that instead of generating [an annual a] management report, the computer is used to generate weekly payroll and employment tax return reports, which consumes 2.0% of the computer's time. The generation of payroll and employment reports is not a [de minimus de minimis] taxable usage of the computer as the reports [is consistently are] generated [on an ongoing basis] . Therefore, the computer is not considered used exclusively for research and is taxable.

§ 2.4. Item changed from exempt to taxable use.

When tangible personal property is purchased exempt of the tax for direct and exclusive use in research and is subsequently used in a manner other than that which would retain the exemption, the tax must be remitted directly to the department using Consumer Use Tax Return, Form ST-7 [,] based on the purchase price of the property. However, if the taxable use of the property [is made occurs] more than six months after the date it was purchased, the tax may be computed on the lower of purchase price or fair market value at the time the taxable use was made. The burden of proof is on the person to substantiate the fair market value of the property.

§ 2.5. Equipment purchased or leased for use by other companies.

An item is not used directly and exclusively merely because it is essential to research activities or because its use is required by law. Additionally, tangible Tangible personal property shall must be purchased or leased by the person, firm, corporation, or other entity that actually will perform research activities in order to qualify for the tax exemption for items used directly and exclusively in basic research or research and development . If the research equipment is purchased or leased by a person and is subsequently donated or loaned to another person to perform research for either party, the equipment is taxable to the person making the purchase, even if the other party is a nonprofit organization, governmental entity, or is otherwise exempt from the sales and use tax.

Example: A company hires an institution to conduct research on its behalf. The company purchases research equipment which it donates to the institution to conduct the research. The company is taxable on the purchase price of the equipment because it is not actually conducting the research activities.

E. Experimental and laboratory defined.

1. "Experimental" means a test or trial, a tentative procedure or policy adopted under controlled conditions to discover, confirm or disprove something doubtful.

2. "Laboratory" means a place equipped for experimental study in a science and providing an opportunity for experimentation, observation or practice in a field of basic scientific or traditional physical science research.

F. **Extent of exemption.** The exemption is limited in scope to those items used directly and exclusively in an actual research process, starting with the handling and storage of raw materials at the research facility and ending after the last step of the basic research or research and development process when the products of the research process are stored at the research facility. Items of tangible personal property used directly and exclusively in basic research or research and development include materials worked on, equipment, machinery, tools, supplies, energy, fuel, and power used in such processes.

PART III. TAXABLE AND EXEMPT ITEMS.

E. § 3.1. Taxable and exempt items.

Following are examples of taxable and exempt items used in research activities. These lists are exemplary and are not intended to be all inclusive.

1. Taxable:

a. Desks, chairs, copy machines, calculators, file cabinets, typewriters, etc., used by *administrative* clerical personnel in support of research activities;

b. Desks, chairs, copy machines, file cabinets, *work benches, storage cabinets used to store research equipment, tools, and supplies*, etc., used by research personnel;

c. Heating and cooling equipment used to maintain an optimum temperature in a research facility when also used for general heating and cooling purposes;

d. Items used in the publication of research findings;

e. Items used in marketing new products resulting from research and development ;

f. Computer hardware and taxable *prewritten or modified* software when used for administrative and other activities collateral to actual research activities;

g. Equipment and supplies for cleaning or sterilizing items used directly in research activities either before or after ~~such~~ *these* activities;

h. Equipment and supplies used to produce items that will be used directly in research activities;

i. *Technical books and journals purchased by a research facility for general reference and training purposes, or to keep research personnel informed of current scientific advancements, achievements, or events, and not purchased in connection with specific research activities.*

2. Exempt when used directly and exclusively in research :

a. Test tubes, flasks, reagents, microscopes, and slides , *and similar items when used in a research facility ;*

b. *Electronic instrumentation and components, Laboratory laboratory tables and equipment, tools, and similar items used in a research facility ;*

c. Technical books and journals purchased by a research facility for use in performing background research *for a specific research project ;*

d. Paper and supplies used to record research findings during the actual research process;

e. Computer hardware and ~~taxable~~ software when used exclusively to store, retrieve, and process research data;

f. Protective clothing provided gratuitously to employees engaged in research activities;

g. Items used to transport or store research materials during and between various steps of research *at the research facility when used exclusively for such purposes ;*

h. Heating and cooling equipment ~~when~~ used ~~exclusively~~ to maintain the integrity of research materials;

i. Repair parts for new equipment used during the field testing stage of research ~~and development~~ activities; and

j. *Drugs, chemicals, animals, and other raw materials, including the cabinets, shelves, or cages in which these items are stored.*

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PART IV. CONTRACTORS.

§ 4.1. Contractors.

Generally, a contractor is the user and consumer of all tangible personal property furnished to or by him in connection with real property construction, reconstruction, installation, repair, and similar contracts as provided in VR 630-10-27. However, tangible personal property furnished to or by the contractor which will be used directly and exclusively in research is exempt from the tax. The contractor may purchase this property exempt of the tax by furnishing to the vendor a properly executed exemption certificate, Form ST-11A.

PART V. EXEMPTION CERTIFICATES.

§ 5.1. Use of exemption certificates.

In making purchases for use in research, a person should furnish suppliers with a certificate of exemption, Form ST-11. However, these certificates should not be used in making purchases of items which are not directly and exclusively used in research. If the business gives a certificate of exemption and then uses some of the property purchased for purposes other than research, the business must remit the tax to the department as provided in § 2.4 of this regulation.

Section revised 7/69; 1/79; 1/85.

VA.R. Doc. No. R94-719; Filed March 16, 1994, 10:27 a.m.

* * * * *

Title of Regulation: VR 630-10-97.1. Retail Sales and Use Tax: Services.

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

Effective Date: July 1, 1994.

Summary:

This regulation clarifies the application of the retail sales and use tax to sales of services. Generally, services are exempt from the tax; however, certain services, such as those in connection with the sale of tangible personal property are taxable. Numerous examples are provided to illustrate the tax treatment of transactions involving both the provision of tangible personal property and the rendition of services as determined using the "true object" test as explained therein. The taxability of information services and the tax responsibilities of service providers are also clarified.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-97.1. Retail Sales and Use Tax: Services.

§ 1. Generally.

Charges for services generally are exempt from the retail sales and use tax. However, services provided in connection with sales of tangible personal property are taxable.

Transactions involving both the sale of tangible personal property and the provision of services, generally are either taxable or exempt on the full amount charged, regardless of whether the charges for the service and property components are separately stated. As explained in § 4 of this regulation, the "true object" test is used to determine the taxability of these transactions.

A. § 2. Taxable services.

The tax does apply to charges Charges made for the following are taxable :

(1) ~~any~~ 1. Any services included in or in connection with the sale of tangible personal property;

(2) 2. Any services in connection with the fabrication of tangible personal property ~~for consumers who furnish whether or not the customer furnishes~~, either directly or indirectly, the materials used in fabrication (see also § VR 630-10-37);

(3) 3. Any services in connection with the furnishing, preparing, or serving by a person for a consideration of meals or other tangible personal property ~~consumed on his property~~ (see VR 630-10-64) ; and

(4) ~~any~~ 4. Any rooms, lodgings or accommodations furnished to transients by any hotel, motel, inn, tourist camp or cabin, camping grounds, club or any other similar place furnished for less than 90 continuous days (see also § VR 630-10-48).

B. Nontaxable § 3. Exempt services.

The tax does not apply to charges made for the following The following are not subject to the tax :

(a) ~~personal~~ 1. Personal , professional, or insurance transactions which involve sales as inconsequential elements for which no separate charge is made;

(b) ~~separately~~ 2. Separately stated services performed by repairmen (see VR 630-10-90) ;

(c) ~~separately~~ 3. Separately stated labor or service

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charges for the repair, installation, application or remodeling of tangible personal property; and

(d) separately 4. Separately stated transportation charges (see also § VR 630-10-107);

5. Separately stated charges for alterations to apparel, clothing and garments (see VR 630-10-8.1);

6. Charges for gift wrapping services performed by a nonprofit organization;

7. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602 of the Code of Virginia (see VR 630-10-49.2); and

8. Computer programs that meet the requirements of "custom programs" as defined in § 58.1-602 of the Code of Virginia (see VR 630-10-49.2).

2. Service vs. sale § 4. Determination of the appropriate tax treatment of service and sale transactions; information services.

A. In order to determine whether a particular transaction which involves both the rendering of a service and the provision of tangible personal property constitutes an exempt service or a taxable retail sale, the "true object" of the transaction must be examined. If the object of the transaction is to secure a service and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute an exempt service. However, if the object of the transaction is to secure the property which it produces, then the entire charge, including the charge for any services provided, will be taxable. For example, the object of a transaction which includes the electronic transmittal of current stock market quotations via a terminal is deemed to be a service since the object of the transaction is to obtain the service of electronic information transmittal and the tangible personal property included serves only as the medium for securing the service.

Conversely, if Example of a taxable transaction. If one commissions an artist to paint a portrait, the entire transaction is deemed to be a taxable sale despite the fact that a considerable amount of the charge represents the artist's labor, since the object is to obtain the finished product. Section revised 11/85.

Example of an exempt service transaction. Charges for training programs which include charges for required workbooks and tapes are exempt from the tax as charges for services since the object is to obtain the training services. However, separately stated charges for workbooks and tapes are subject to the tax.

In instances where both the services rendered and the

property transferred are critical elements of a transaction, the degree of customization, uniqueness or specific services provided in connection with the product shall be considered in determining its appropriate tax status. The following are examples of transactions in which the tax status is based on these factors:

1. Taxable.

- a. Standard data lists, reports
- b. Extra copies of reports, letters
- c. Equipment rentals
- d. Data communications equipment

2. Exempt.

- a. Customized data lists, reports
- b. Original letters, reports
- c. Equipment rentals with operators
- d. Data communications services, including equipment

The object of the exempt transactions is to obtain a service from the seller. However, the object of the taxable transaction is to obtain the tangible personal property provided by the seller since no special or customized services are involved in providing the tangible property.

B. The object of any transaction which includes the transmittal of information through electronic means (e.g., current stock market quotations via a terminal) is deemed to be a service since the object of the transaction is to obtain the service of electronic information transmittal and the tangible personal property included serves only as the medium for securing the service. However, the sale or lease of tangible personal property which transmits or receives electronic information not in connection with the provision of information services are taxable.

Example. A taxpayer provides information retrieval services and in connection therewith leases or rents computer equipment to its customers. Charges for the retrieval service, which include charges for the lease or rental of the equipment, are exempt from the tax. However, if the taxpayer leases or sells computer equipment to customers without the provision of the information services, such lease or sale is taxable.

Information conveyed via tangible means (e.g., diskette, computer tape, report, etc.) generally is taxable except for information customized to a particular customer's needs and sold to that particular customer.

§ 5. Tax responsibilities.

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A service provider is the taxable user and consumer of all tangible personal property purchased for use in providing exempt services. If a supplier fails to collect the tax from a service provider, the provider shall remit use tax to the department as provided in VR 630-10-109.

Any service provider who also makes retail sales of tangible personal property must register as a dealer with the department and collect and remit the tax on its sales.

Example of service provider making retail sales. A person engaged in transmitting and receiving facsimile documents for a fee is deemed to be providing a nontaxable service. However, if he charges a fee for copies of a faxed document, such charges are taxable.

When making bulk purchases of items, some of which will be used in providing services and some of which will be used in making retail sales, a person may purchase all such items exempt from the tax using a certificate of exemption, Form ST-10. The person shall remit use tax to the department on any tangible personal property purchased for resale but used in providing exempt services based on the cost price of the items used.

VA.R. Doc. No. R94-718; Filed March 16, 1994, 10:27 a.m.

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Title of Regulation: VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.

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

Effective Date: July 1, 1994.

Summary:

The regulation has been revised to clarify the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion, and repair. It explains what types of vessels are and are not eligible for the exemption. For example, vessels which are used exclusively or more than 50% of the time in interstate or foreign commerce, as well as the repairs to such, are exempt from the tax. In addition, dredges and attendant vessels used more than 50% of the time in dredging interstate waterways, are entitled to the exemption. However, vessels not engaged in interstate and foreign commerce, such as those not physically involved in the dredging of an interstate waterway, are taxable.

The regulation clarifies the exemptions available to those engaged in shipbuilding, conversion, and repair. Fuel used for propulsion of ships and vessels generally is exempt from the tax. In addition, fuels used to operate equipment not an integral part of and supplies purchased for use on ships and vessels which

ply the high seas in intercoastal trade or foreign commerce are also exempt. However, fuels used to operate equipment on vessels which do not ply the high seas, such as dredges or barges, are taxable.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.

§ 1. Definitions.

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

"Foreign commerce" means a business venture between persons in the United States and those in a foreign country.

"High seas" means that portion of the ocean which is beyond the territorial jurisdiction of the United States. It does not include the Chesapeake Bay, intercoastal waterways, or inland rivers or waterways.

"Intercoastal trade" means the exchange of goods or commodities between ports.

"Interstate commerce" means a business venture between the people of two states.

"Principally" means more than 50%.

"Used directly" means those items that are both indispensable to the building, conversion, or repair process and which are used as an immediate part of such process. See VR 630-10-63 for further explanation of this term.

§ 2. Ships and vessels used in interstate or foreign commerce; dredges and attendant vessels.

The tax does not apply to ships A. Ships or vessels used or to be used exclusively or principally in interstate or foreign commerce or to the charge for repairs and alterations of them are exempt from the tax. The tax does not apply to fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in this state and ports in other states of the United States or its territories or

possessions; or in foreign commerce between ports in this state and ports in foreign countries when delivered directly to such ships or vessels. Ships or vessels which are not principally used in interstate or foreign commerce are subject to the tax. This includes charter party boats, fishing vessels, and other vessels which leave a point in one state and return to the same point without docking in another state.

B. Dredges and attendant vessels, such as barges upon which silt from the dredging process is loaded, are entitled to the exemption set forth in this section and § 3 provided they are principally used in the dredging of interstate waterways. Vessels not physically involved in the dredging of an interstate waterway, such as crew boats, survey boats, and barges used to move equipment, materials, and employees from the dredging site, are subject to the tax.

§ 3. Shipbuilding, conversion, and repair.

The tax does not apply to tangible personal property used directly in the building, conversion, or repair of such ships or vessels (i) used or to be used exclusively or principally in interstate or foreign commerce, or (ii) plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States, its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, is exempt from the tax. Persons engaged in the building, conversion, or repair of such ships or vessels may be eligible for the manufacturing exemption set forth in VR 630-10-63. Items of tangible personal property which are used directly in the building, conversion, or repair process, such as machinery, tools, fuel, power, energy, and supplies, may be purchased exempt from the tax. Items of tangible personal property used indirectly in shipbuilding, conversion, or repair activities are subject to the tax. For example, tangible personal property purchased for use in providing shipboard or support services, including, but not limited to crew berthing, and power, water, steam, and refrigeration services for the crew's facilities, in connection with the repair of vessels, is deemed to be used indirectly in the process and subject to the tax.

See VR 630-10-63 for further description of the manufacturing/processing exemption.

For repairs to ships or vessels not meeting the interstate or foreign commerce or plying the high seas requirements, see VR 630-10-90.

§ 4. Fuel and supplies; vessels and ships plying the high seas.

A. Fuel used for propulsion of ships or vessels, including dredges, [are is] exempt from the tax pursuant to subdivision 6 of § 58.1-609.1 of the Code of Virginia. However, except as provided in this section, fuel used to operate equipment which is not an integral part of a ship,

boat, or vessel, generally is taxable.

B. Fuel for the propulsion or operation of equipment and supplies for use aboard ships or vessels plying the high seas, either (i) in intercoastal trade between ports in this state and ports in other states of the United States or its territories or possessions, or (ii) in foreign commerce between Virginia ports in this state and ports in foreign countries [is are] exempt from the tax when delivered directly to such ships or vessels.

Fuel used to operate machinery and equipment which is not an integral part of and supplies purchased for use on ships or vessels which do not ply the high seas in intercoastal trade or foreign commerce, such as dredges or barges, is taxable. When fuel is used in both taxable and exempt activities, the tax due is prorated between the percentage of use in taxable and exempt activities. For example, fuel used in engines to both propel a dredge and to operate equipment on such is taxable based upon the percentage of usage in operating the equipment.

The foregoing exemptions are restricted to the ships and vessels described and do not extend to other ships, vessels, boats or other watercraft. For manufacturers, processors, etc., in general see § 630-10-63; for contractors see § 630-10-27. Section revised 1/79; 1/85.

VA.R. Doc. No. R94-717; Filed March 16, 1994, 10:27 a.m.

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Title of Regulation: VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.

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

Effective Date: July 1, 1994.

Summary:

This regulation adds a definition for electronic prepress operations; clarifies that typesetting and electronic prepress operations qualify for the industrial manufacturing exemption if the printers, for whom the work is done, are also industrial manufacturers; and sets forth examples of exempt typesetting and electronic prepress materials, machinery, tools, and equipment.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Tax Commissioner, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.

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§ 1. Definitions.

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

"Electronic prepress" means any process involved in taking manuscript, conventionally supplied artwork, electronically supplied artwork, electronically supplied keystrokes, and other client materials and formatting these materials into electronic commands so that they can be output as film or paper to image-setting output devices or prepared in such a way that they can be distributed electronically by way of any electronic or magnetic media. It also includes the various proofing steps that are required prior to final output or distribution by way of any electronic or magnetic media.

"Typesetting" means the process by which specialized equipment is used to accept front-end commands and to transform them into text characters according to the font, type size, and other instructions of a composition system and includes electronic prepress, as defined in this section.

A. § 2. Generally.

Persons engaged in providing typesetting products for sale or resale to printers which qualify for the industrial manufacturing exemption as set forth in subdivision 2 of § 58.1-609.3 of the Code of Virginia are also considered industrial manufacturers under the Virginia Retail Sales and Use Tax Act, regardless of whether finished products are produced by hand composition, machine composition, photocomposition, or typographic composition, or electronic page composition.

B. § 3. Sales.

The sale of typesetting products is the sale of tangible personal property. The tax is computed upon the total charge for typesetting, including any charges for services connected with the sale. All typesetting operations must register as dealers and, in addition, they must collect the tax from their customers, and remit the sales tax to the department unless the customer furnishes a valid exemption certificate, as provided in VR 630-10-20 § 630-10-86 is applicable to purchases of typesetting products by printers.

C. § 4. Purchases by typesetters.

§ 630-10-63, on manufacturing applies to purchases by typesetters, as industrial manufacturers, are exempt from taxation on the purchase of industrial materials, machinery, tools, equipment, and other items of tangible personal property by typesetters that are used primarily and directly in the production of typesetting products to be sold or resold to printers qualifying for the industrial manufacturing exemption. Examples of exempt typesetting materials, machinery, and equipment include, but are not limited to, the following:

1. Computer hardware and software;
2. Disk drives;
3. Linotype, monotype, and Ludlow machines and their related attachments;
4. Keyboards;
5. Line plates, halftone plates, combination plates, and similar items;
6. On and offline terminals;
7. Optical scanner readers;
8. Paper and magnetic tape readers;
9. Paper stock, film or plating materials on which type or images are set; and
10. Proofing equipment.

§ 5. Word processing.

Word processing, as set forth in VR 630-10-114, used in the production of customized letters, resumes, reports, and similar products (even when produced by a business also engaged in typesetting) is not industrial manufacturing for purposes of the exemption described in § 4 [of this regulation] .

Section added 1/84.

VA.R. Doc. No. R94-716; Filed March 16, 1994, 10:27 a.m.

VIRGINIA MILITARY INSTITUTE

Title of Regulation: 1994 Summer Session Catalogue of Virginia Military Institute.

Statutory Authority: § 23-9.213 of the Code of Virginia.

Effective Date: May 30, 1994.

Summary:

The 1994 Summer Session Catalogue at the Virginia Military Institute sets forth both academic and nonacademic regulations for students during the 1994 VMI summer session. It also contains summer session dates, admission requirements, registration procedures, summer session fees, a description of the VMI honor code, motor vehicle regulations, and course offerings.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

January 20, 1994

.....ADMINISTRATIVE LETTER 1994 - 4

To: All Insurers, Health Services Plans, and Health Maintenance Organizations Licensed to Write Accident and Sickness Insurance in Virginia

Re: Virginia Insurance Regulation No. 38: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers

Pursuant to Virginia Insurance Regulation No. 38 and § 38.2-3419.1 of the Code of Virginia, ALL insurers, health services plans, and health maintenance organizations licensed to issue policies of accident and sickness insurance or subscription contracts in Virginia are to report cost and utilization data relating to mandated benefits and mandated providers for the calendar year 1993 to the Bureau of Insurance by May 1, 1994.

Each and every company licensed as described above must submit a report to the Bureau of Insurance. Please note the following:

1. Companies that meet any one of the exemption criteria contained in Section 4.B. of Regulation No. 38 for the 1993 reporting period are required to complete and file the first page of Form MB-1. It is the Bureau's position that insurers exempt pursuant to Section 4.B. are **NOT** exempt from the regulation; they are merely exempt from the full reporting requirement. The fact that a company may have written no applicable business in Virginia during 1993 does not exempt that company from filing for an exemption. Each licensed company must file either a full report or a request for exemption.

2. It is not acceptable to consolidate information from companies within the same holding company system. Each licensed company must file its own Form MB-1.

3. This is the third reporting year since Regulation No. 38 became effective. Lack of notice, lack of information, lack of a means of producing the required data, or other such excuses will under no circumstances be accepted. Please be advised that disciplinary action was initiated against over 200 companies last year for failing to report in a timely manner.

4. Reports filed in compliance with this regulation must be in the format contained in Form MB-1 (a copy of which is attached to this letter). Companies filing full reports are encouraged to do so on computer diskettes issued by the Bureau of Insurance. Companies may submit their reports in paper form, if typed. Each company wishing to file its report on diskette should complete and return the attached

Diskette Request Form. Diskettes supplied by the Bureau of Insurance will contain Form MB-1 and the necessary data entry system.

5. Companies are reminded that Regulation No. 38 contains specific instructions and reference materials which define the data required to complete Form MB-1. A list of instructions is attached to this Administrative Letter to provide further clarification. In addition, §§ 38.2-3408 through 38.2-3418.1 of the Code of Virginia, which are the subject of this regulation, should be consulted.

Correspondence regarding this reporting requirement, including Form MB-1 filings, should be directed to:

Mr. Hil Richardson
Senior Insurance Analyst
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23209
Telephone No. (804) 371-9388

Section 38.2-218 of the Code of Virginia provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than \$5,000. Failure to file a substantially complete and accurate report or exemption request pursuant to the provisions of Regulation No. 38 by the due date may be considered a willful violation and may subject the company to an appropriate penalty.

/s/ Steven T. Foster
Commissioner of Insurance

VA.R. Doc. No. R94-680; Filed March 10, 1994, 3:34 p.m.

Form MB-1 Instructions

The Form MB-1 attached to this Administrative Letter has been modified from that originally promulgated with the Regulation as follows:

1. In Part A: Benefit Worksheet #1 - Individual (page 2) the line labeled "Obstetrical Services" has been deleted.
2. In Part C (page 6), blanks in the single coverage columns (both individual and group) to the right of the "Newborn Children" heading have been deleted.
3. In Part C (page 6), blanks directly to the right of the "Mental/Emotional/Nervous" and "Alcohol and Drug Dependence" headings have been deleted. Separate inpatient and outpatient figures are required for both benefit categories and should be recorded in the appropriate blanks.
4. In Part C (page 7), questions #2 and #3, the year "1991" has been replaced by "1993".
5. In Part C (page 8), two questions have been added to #5 to accommodate insurers who charge group policyholders a flat fee per conversion to individual coverage.
6. In Part D (page 9), the procedure code for "Office Visit, Intermediate Service to a New Patient" has been updated from 90015 to 99203 to reflect changes by the American Medical Association to the Physician's Current Procedural Terminology.

Parts A and B

1. Part A requires disclosure of specific claim data for each mandated benefit and mandated offer for both individual and group business. Part B requires similar data for each mandated provider category. In determining the cost of each mandate, it is expected that claim and other actuarial data will be used. Appendix C of Regulation No. 38 lists CPT-4 and ICD-9CM Codes which should be used in collecting the required data.

Correction: The CPT-4 Codes listed for "Delivery, Antepartum and Postpartum Care" under the "Obstetrical Services" category should read as follows:

59400 Routine obstetric care including antepartum care, vaginal delivery (with or without epistiotomy, and/or forceps) and postpartum care

59410 Vaginal delivery only (with or without epistiotomy and/or forceps) including postpartum care

DISKETTE REQUEST FORM

Catherine S. West
 Microcomputer Systems Coordinator
 Bureau of Insurance
 P.O. Box 1157
 Richmond, Virginia 23209

RE: Administrative Letter 1994-4
 Annual Report of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers Pursuant to Section 38.2-3419.1 of the Code of Virginia and Regulation No. 38

Dear Ms. West:

We would like to submit the above-referenced report for the 1993 reporting period on computer diskette using the entry system supplied by the Bureau of Insurance (requiring an IBM or IBM compatible personal computer with DOS and a minimum of 640K of memory). Please forward a:

- 3.5" high density (1.4M) diskette
- 5.25" high density (1.2M) diskette

containing Form MB-1, the required data entry system, and instructions to my attention as indicated below.

Name: _____

Title: _____

Company: _____

NAIC Number: _____ Group NAIC Number: _____

Mailing Address: _____

Phone Number: _____ Date: _____

59412 External cephalic version, with or without tocolysis (list in addition to code(s) for delivery)

59414 Delivery of placenta following delivery of infant outside of hospital

59420 Antepartum care only (separate procedure)

59430 Postpartum care only (separate procedure)

2. On the worksheets for individual business (pages 2 and 4), for column d - Number of Contracts, companies should report the number of individual contracts which contain the benefits and providers listed. For example, benefits which are mandated offers may be present in fewer contracts than mandated coverages.
3. On the worksheets for group business (pages 3 and 5), for column d - Number of Contracts, companies should report the number of group certificates which contain the benefits and providers listed, not the number of group contracts. Therefore, column e - Claim Cost per Contract, requires a cost per certificate figure. It is understood that the number of group certificates can change frequently, but every effort should be made to estimate the average number in force during the reporting period.
4. Column f - Annual Administrative Cost (pages 2-5) should only include 1993 administrative costs (not start-up costs, unless those costs were incurred during the reporting period).
5. Column g - Percent of Total Health Claims Paid figures should be calculated using one base for the individual business worksheets (pages 2 and 4) and another base for the group business worksheets (pages 3 and 5). Claim information should be limited to claims on policies or contracts issued or issued for delivery in the Commonwealth of Virginia and subject to Virginia mandated benefit and provider statutes.

Part C

1. Part C requires the company to identify standard individual and group policies, the annual premium for each type of coverage, and the portion of the annual premium attributable to each mandated benefit, offer, and provider. It is understood that companies do not usually rate each benefit and provider separately. However, for the purpose of this report it is required that a dollar figure be assigned to each benefit and provider based on the company's actual claim experience, such as that disclosed in Parts A and B, and other relevant actuarial information.

2. In Part C (page 7), question #4, the premium for a policy "with mandates" should include all mandated benefits, offers, and providers.

Part D

1. This section requires that claim data be reported by procedure code, by provider type. The term "physician" refers to medical doctors.
2. Data should only reflect approved claims. Denials should not be included.

General

1. Claim information can be reported on either an incurred or paid basis as long as one is used consistently. Companies using Bureau of Insurance issued diskettes will be prompted to indicate which basis has been used. Companies filing on paper should note which basis has been used in a cover letter accompanying the report.
2. Information provided on Form MB-1 should only reflect the experience of policies or contracts issued or issued for delivery in the Commonwealth of Virginia and subject to Virginia mandated benefit and provider statutes.
3. Symbols such as "N/A" should not be used in these reports. If a particular question or group of questions are not applicable to a company, then the corresponding blanks should be left empty (an answer of "0" will be given a numeric value of zero). All empty blanks should be explained in a cover letter accompanying the report filing.

State Corporation Commission

Form MB-1
Annual Report of Cost and Utilization Data
Relating to Mandated Benefits and Mandated Providers
Pursuant to §38.2-3419.1 of the Code of Virginia

Reporting Year **1993**

Company Name _____
 Group Name _____
 Mailing Address _____

 NAIC# _____ Group NAIC # _____
 Name of Person Completing Report _____
 Title _____
 Direct Telephone # _____
 Mailing Address _____

 Total accident and sickness premiums written in Virginia:
 in the year _____ the amount of \$ _____
 Is the reporting company a cooperative nonprofit life benefit company or mutual assessment
 life, accident and sickness insurer? Yes No
 Does this company solely issue policies not subject to the mandated benefits and mandated
 provider requirements of §§18.2-3408 through 38.2-3419 and 38.2-4221 of the Code of
 Virginia? Yes No
 Does this company claim an exemption under Section 4 of Regulation No. 38 for this reporting
 year? Yes, and filing only this page. No, and filing a complete report.
 Signature _____ Date _____

Part A: Benefit Worksheet # 1 – Individual

Enter the basis on which claim data presented throughout this report was collected (either paid or incurred):

Va. Code Section	Description	a Number of Visits	b Number of Days	c Total Claims Payments	d Number of Contracts	e Claim Cost Per Contract	f Annual Administrative Cost	g Percent of Total Health Claims Paid
38.2-3409	Handicapped Dependent Children							
38.2-3410	Doctor to Include Dentist							
38.2-3411	Newborn Children							
38.2-3412.1	Inpatient Mental / Emotional / Nervous							
38.2-3418	Pregnancy from Rape / Incest							
38.2-3418.1	Mammography							
38.2-3411.1	Child Health Supervision							

- * include information and amounts paid on hospital bills and other providers
 a : number of provider and physician visits
 b : number of days in facility (if applicable)
 c : total of claims paid for this mandate
 d : number of contracts in force in Virginia containing the required or optional coverage
 e : cost per contract = column c divided by column d
 f : the administrative cost of complying with this mandate during the reporting year
 g : claims paid for this benefit as a percentage of the total amount of health claims paid on individual policies or contracts subject to this reporting requirement

State Corporation Commission

Benefit Worksheet # 2 – Group

* Benefit	a	b	c	d	e	f	g
Va. Code Section	Number of Visits	Number of Days	Total Claims Payments	Number of Certificates	Claim Cost Per Certificate	Annual Administrative Cost	Percent of Total Health Claims Paid
38.2-3409	Handicapped Dependent Children						
38.2-3410	Doctor to Include Dentist						
38.2-3411	Newborn Children						
38.2-3412.1	Mental / Emotional / Nervous:						
	Inpatient						
	Outpatient						
38.2-3412.1	Alcohol and Drug Dependence:						
	Inpatient						
	Outpatient						
38.2-3414	Obstetrical Services						
38.2-3418	Pregnancy from Rape / Incest						
38.2-3418.1	Mammography						
38.2-3411.1	Child Health Supervision						

* include information and amounts paid on hospital bills and other providers (for all health care expenses incurred because of this mandate)

- a : number of provider and physician visits
- b : number of days in facility (if applicable)
- c : total of claims paid for this mandate
- d : number of certificates containing the required or optional coverage
- e : cost per contract = column c divided by column d
- f : the administrative cost of complying with this mandate during the reporting year
- g : claims paid for this benefit as a percentage of the total amount of [all] health claims paid on group contracts subject to this reporting requirement

Part B: Provider Worksheet # 1 – Individual

Provider

Va. Code Sections	a	b	c	d	e	f	g
38.2-3408 & 38.2-4221	Number of Visits	Total Claims Payments	Cost Per Visit	Number of Contracts	Cost Per Contract	Annual Administrative Cost	Percent of Total Health Claims Paid
Chiropractor							
Optometrist							
Optician							
Psychologist							
Clinical Social Worker							
Podiatrist							
Professional Counselor							
Physical Therapist							
Clinical Nurse Specialist							
Audiologist							
Speech Pathologist							

- a : number of visits to this provider group for which claims were paid in Virginia
- b : total dollar amount of claims paid to this provider group in Virginia
- c : cost per visit = column b divided by column a
- d : number of individual contracts subject to this reporting requirement
- e : cost per contract = column b divided by column d
- f : the annual administrative cost associated with compliance of complying with this mandate during the reporting period
- g : claims paid for services administered by this provider group as a percentage of the total amount of health claims paid on individual policies or contracts subject to this reporting requirement

State Corporation Commission

Provider Worksheet # 2 – Group

Provider

Va. Code Sections 38.2-3408 & 38.2-4221	a Number of Visits	b Total Claims Payments	c Cost Per Visit	d Number of Certificates	e Cost Per Certificate	f Annual Administrative Cost	g Percent of Total Health Claims Paid
Chiropractor							
Optometrist							
Optician							
Psychologist							
Clinical Social Worker							
Podiatrist							
Professional Counselor							
Physical Therapist							
Clinical Nurse Specialist							
Audiologist							
Speech Pathologist							

- a : number of visits to this provider group for which claims were paid in Virginia
- b : total dollar amount of claims paid to this provider group in Virginia
- c : cost per visit = column b divided by column a
- d : number of certificates subject to this reporting requirement
- e : cost per contract = column b divided by column d
- f : the annual administrative cost associated with compliance of complying with this mandate during the reporting period
- g : claims paid for services administered by this provider group as a percentage of the total amount of health claims paid on group contracts subject to this reporting requirement

Part C

1. Please use what you consider to be your standard policy to answer this question. For the individual policy used as your base calculations in the question below:

- o What is the deductible? _____
- o What is the coinsurance? _____
- o What is the individual/employee out-of-pocket maximum? _____

For the group policy used as your base calculation in the question below:

- o What is the deductible? _____
- o What is the coinsurance? _____
- o What is the individual/employee out-of-pocket maximum? _____

For your health insurance in Virginia, what is the total annual premium including mandates, and what amount is added to the annual premium of each type policy for each mandate listed?

Please indicate where coverage under your policy exceeds Virginia's mandates.

	Individual Policy Single Family	Group Certificates Single Family
Total Annual Policy Premium	_____	_____
Premium for:		
Dependent Children Coverage	_____	_____
Doctor to Include Dentist	_____	_____
Newborn Children	_____	_____
Mental/Emotional/Nervous (Mental Disabilities) Inpatient	_____	_____
*Outpatient	_____	_____
*Alcohol and Drug Dependence	_____	_____
Inpatient	_____	_____
Outpatient	_____	_____
*Obstetrical Services	_____	_____
Pregnancy from Rape or Incest	_____	_____
**Mammography	_____	_____
*Child Health Supervision	_____	_____

* Denotes mandated offering

Chiropractor	_____	_____	_____
Optometrist	_____	_____	_____
Optician	_____	_____	_____
Psychologist	_____	_____	_____
Clinical Social Worker	_____	_____	_____
Podiatrist	_____	_____	_____
Professional Counselor	_____	_____	_____
Physical Therapist	_____	_____	_____
Clinical Nurse Specialist	_____	_____	_____
Audiologist	_____	_____	_____
Speech Pathologist	_____	_____	_____

2. What is the number of individual policies and/or group certificates issued by your Company in 1993 in Virginia?

	Single	Family
Individual	_____	_____
Group	_____	_____

3. What is the number of individual policies and/or group certificates in force for your company as of December 31, 1993 in Virginia?

	Single	Family
Individual	_____	_____
Group	_____	_____

4. What would be the annual premium for an individual policy with no mandated benefits or mandated providers for a 30 year old male in the Richmond area in your standard premium class? What would be the cost for a policy for the same individual with present mandates? (Assume coverage including \$250 deductible, \$1,000 stop-loss limit, 80% co-insurance factor, \$250,000 policy maximum.) If you do not issue a policy of this type, please provide the premium for a 30 year old male in your standard premium class for the policy that you offer that is most similar to the one described and summarize the differences from the described policy.

Without Mandates \$ _____
 With Mandates \$ _____

Differences in Policy _____

5. Do you add an amount to the annual premium of a group certificate to cover the cost of conversion to an individual policy? Yes _____ No _____

If yes, what is the average dollar amount:
 Single _____ Family _____

If no, is that cost covered in the annual premium of the individual policy? Yes _____ No _____

If no, is a one-time charge made to the group policyholder for each conversion?
 Yes _____ No _____

If yes, what is the average dollar amount:
 Single _____ Family _____

Part D: Utilization and Expenditures for Selected Procedures by Provider Type

Select Procedure Codes are listed here to obtain information about utilization and costs for specific types of services. Please identify expenditures and visits for the Procedure Codes indicated. Other claims should not be included here. Individual and group data must be combined for this part of the report.

1. Procedure Code 99203 (formerly 90015)
Office Visit, Intermediate Service to New Patient

	Number of Visits	Claims Payments	Cost Per Visit
Chiropractor			
Clinical Social Worker			
Physical Therapist			
Podiatrist			
Professional Counselor			
Psychologist			
Physician			

2. Procedure Code 90844
Medical Psychotherapy, 45 to 50 Minute Session

	Number of Visits	Claims Payments	Cost Per Visit
Clinical Nurse Specialist			
Clinical Social Worker			
Professional Counselor			
Psychiatrist			
Psychologist			
Physician			

3. Procedure Code 90853
Group Medical Psychotherapy

	Number of Visits	Claims Payments	Cost Per Visit
Clinical Nurse Specialist			
Clinical Social Worker			
Professional Counselor			
Psychiatrist			
Psychologist			
Physician			

4. Procedure Code 92507
Speech, Language or Hearing

	Number of Visits	Claims Payments	Cost Per Visit
Audiologist			
Clinical Social Worker			
Physical Therapist			
Professional Counselor			
Speech Pathologist			
Physician			

5. Procedure Code 97110
Physical Medicine Treatment, 30 Minutes, Therapeutic Exercise

	Number of Visits	Claims Payments	Cost Per Visit
Chiropractor			
Physical Therapist			
Physician			
Podiatrist			
Speech Pathologist			

6. Procedure Code 97124
Physical Medicine Treatment, Massage

	Number of Visits	Claims Payments	Cost Per Visit
Chiropractor			
Physical Therapist			
Physician			
Podiatrist			

7. Procedure Code 97128
Physical Medicine Treatment, Ultrasound

	Number of Visits	Claims Payments	Cost Per Visit
Chiropractor			
Physical Therapist			
Physician			
Podiatrist			

8. Procedure Code 92352
Fitting of Spectacle Prosthesis for Aphakia

	Number of Visits	Claims Payments	Cost Per Visit
Ophthalmologist			
Optician			
Optometrist			
Physician			

9. Procedure Code 11765
Excision of Ingrown Toenail

	Number of Visits	Claims Payments	Cost Per Visit
Physician			
Podiatrist			

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

MARINE RESOURCES COMMISSION

NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating regulations. However, the Commission is required to publish the full text of final regulations.

Title of Regulation: VR 450-01-0035. Pertaining to the Culling of Oysters.

Statutory Authority: §§ 28.2-201, 28.2-507, 28.2-511, and 28.2-513 of the Code of Virginia.

Effective Date: February 23, 1994.

Preamble:

This regulation establishes clean cull and seed areas, a minimum size limit, culling requirements, and inspection procedures for oysters taken from public oyster beds, rocks and shoals.

VR 450-01-0035. Pertaining to the Culling of Oysters.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-507, 28.2-511, and 28.2-513 of the Code of Virginia.

B. This regulation rescinds orders 75-4, 82-8, VR 450-01-8801, VR 450-01-8807, and VR 450-01-8808.

C. This regulation amends previous regulation, VR 450-01-0035, which was promulgated by the Marine Resources Commission and made effective September 1, 1987 October 15, 1993.

D. The effective date of this regulation is October 15, 1993 February 23, 1994.

§ 2. Purpose.

The purpose of this regulation is to establish clean cull and seed areas, culling requirements (minimum size limit) and inspection procedures which will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

§ 3. Definitions.

A. Clean cull areas: All natural public oyster beds, rocks, or shoals in the tidal water of Virginia, except those designated by the Marine Resources Commission as seed areas, shall be considered clean cull areas.

B. A. Seed areas: All natural public oyster beds, rocks, or shoals designated for the harvest of seed oysters, as

follows:

1. Seaside of Eastern Shore. All of the public oyster grounds on the eastern side of Accomack and Northhampton Counties on Virginia's Eastern Shore.

2. James River. All of the public oyster grounds in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th and 60th Streets in the City of Newport News, excluding the Jail Island and Point of Shoals Clean Cull area as described in VMRC Orders 450-01-8208 and 450-01-8807 and the Deep Water Shoal State Repletion Seed Area.

3. Deep Water Shoal State Repletion Seed Area in the James River (574.66 acres) - beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, North 302,280.00, East 2,542,360.00; thence North Azimuth 30°49'59", 4,506.99 feet to Corner 2, North 306,150.00, East 2,544,670.00; thence North Azimuth 135°08'57", 5,430.60 feet to Corner 3, North 302,300.00, East 2,548,500.00; thence North Azimuth 212°13'54", 3,487.42 feet to Corner 4, North 299,350.00, East 2,546,640.00; thence North Azimuth 269°10'16", 2,765.29 feet to Corner 5, North 299,310.00, East 2,543,875.00; thence North Azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning. (Map 1)

B. Clean cull areas: All natural public oyster beds, rocks, or shoals in the tidal waters of Virginia, except those designated by the Marine Resources Commission as seed areas shall be considered clean cull areas.

Two areas within the James River Seed Area are set aside as clean cull areas and are described as follows:

1. Jail Island Clean Cull area (1,010 acres): Beginning at a point approximately 2,000 feet southwest of the shore of Mulberry Island at Point A as located by Virginia State Plane Coordinates, South Zone, NAD 1927 North 281,468.20, East 2,558,879.7; thence North Azimuth 131°26'56", 8,422.95 feet to Corner 1B, North 275,892.62, East 2,565,193.09, North Azimuth 210°28'11", 2,037.29 feet to Corner 20, North 274,136.69, East 2,564,160.02, thence North Azimuth 311°26'56", 8,949.8 feet to Point 22, North 280,061.03, East 2,557,451.72, continuing North Azimuth 311°26'22", 13,325.00 feet to Corner 3, North 288,879.88, East 2,547,462.55, thence North Azimuth 45°25'14", 2,004.82 feet to Corner 4, North 290,287.06, East 2,548,890.54, thence North Azimuth 131°26'22", 13,325.00 feet to Point A, being the point of beginning. (Map 2)

2. Point of Shoals Clean Cull Area (Baylor Acres - 820 acres): Beginning at Channel Light #7 and continuing

Marine Resources Commission

along the south side of channel to Tylers Beach to Channel Light #1 at entrance to Tylers Beach Channel, thence North Azimuth 101°08'43", 8,417 feet to an intersection corner near east end of Long Rock, Latitude 37°04'28.2", Longitude 76°37'37.5", thence North Azimuth 205°11'49", 9,604 feet to Day Marker #4, Latitude 37°03'03.1", Longitude 76°38'30", extending on same Azimuth line to other private ground. This area excludes any private leases within the outlined area. (Map 3)

§ 4. Minimum cull size.

In order to encourage a continued supply of marketable oysters minimum size limits are hereby established. Undersized oysters and/or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidently retained during culling are found in § 5 of this regulation.

A. Oysters taken from clean cull areas shall not have shells less than three inches in length.

B. In the seed area, there shall be no size limit, except as restricted in subsections C and D of this section.

C. B. In the James River seed area ; the shells of oysters marketed for direct consumption shall not be less than 2-1/2 inches in length. (Oysters marketed as seed oysters shall have no size limit.) there shall be no size limit and oysters shall not be marketed for direct consumption.

D. C. On the Seaside of Eastern Shore seed area, the shells of oysters marketed for direct consumption shall not be less than three inches in length. (Oysters marketed as seed oysters shall have no size limit).

§ 5. Culling tolerances or standards.

A. In the clean cull areas, if more than one four quart measure of undersized oysters or shells is found per bushel inspected it shall constitute a violation of this regulation.

B. In the James River seed areas if more than one six quart measure of shells is found per bushel of seed oysters inspected it shall constitute a violation of this regulation.

C. In the James River seed area, if more than one four quart measure of undersized (less than 2-1/2 inches) oysters and shell is found per bushel of oysters to be marketed for direct consumption, it shall constitute a violation of this regulation.

D. C. On the Seaside of Eastern Shore seed areas, if

more than one four quart measure of undersized (less than 3 inches) oysters and shell is found per bushel of oysters to be marketed for direct consumption, it shall constitute a violation of this regulation.

§ 6. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile and subject to inspection by any Marine Resources Commission law-enforcement officer.

B. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this regulation.

C. It shall be unlawful for any harvester to store oysters taken from public grounds on any boat in any type of container. All oysters taken from said areas shall be sold or purchased only in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, except that on the Seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

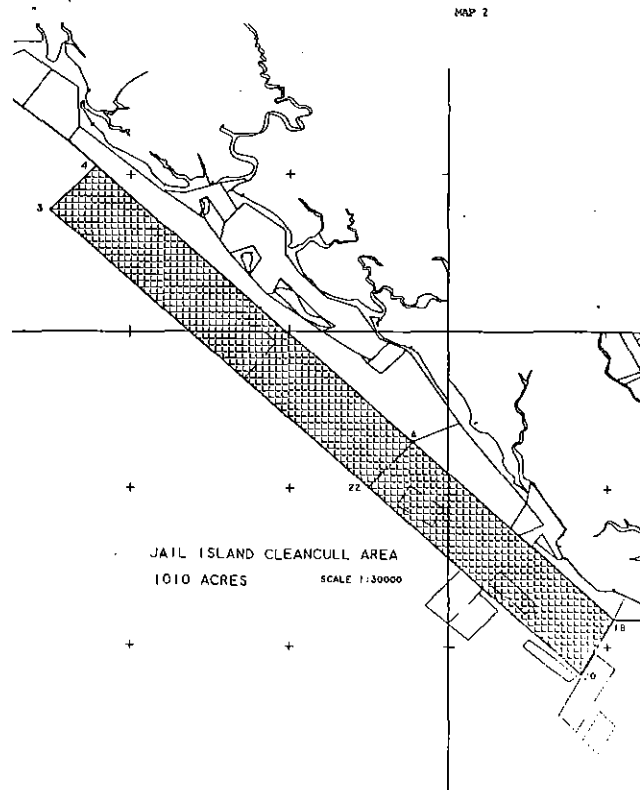
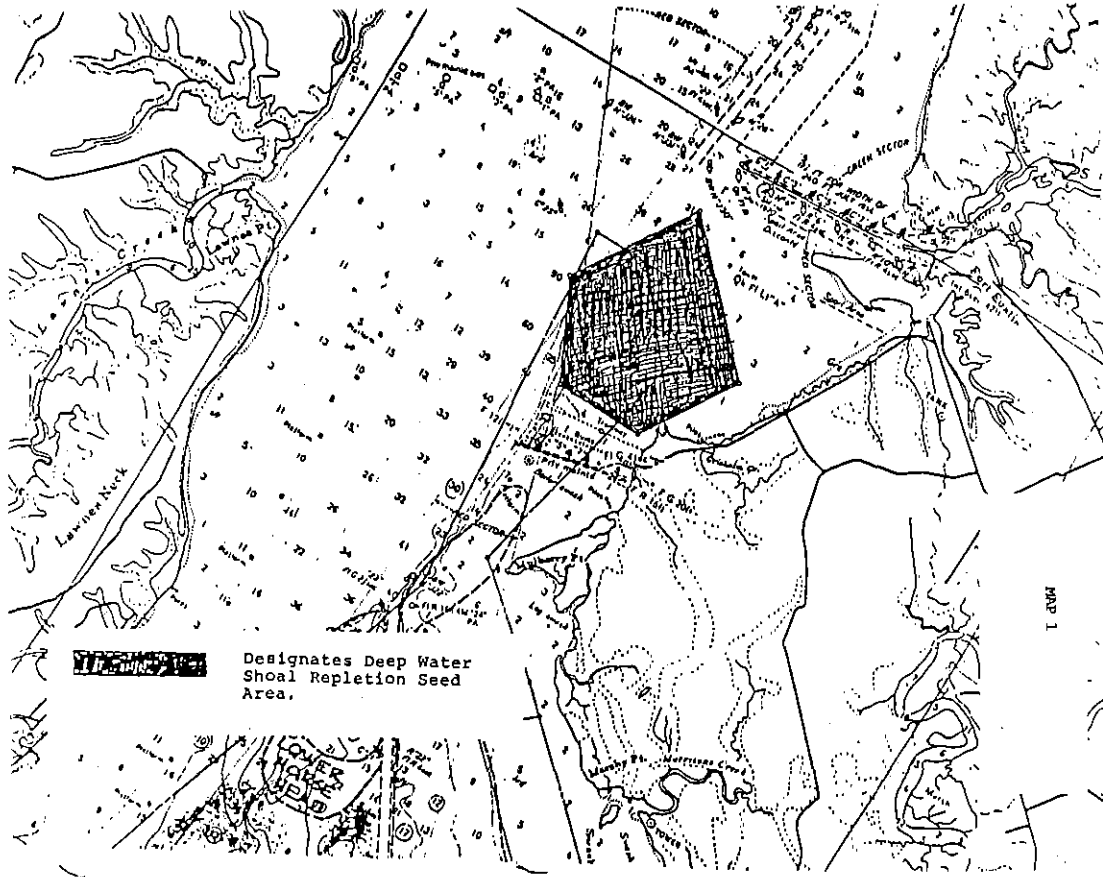
D. In the inspection of oysters the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters.

§ 7. Penalty.

As set forth in §§ 28.2-201 and 28.2-511 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

VA.R. Doc. No. R94-700; Filed March 16, 1994, 9:57 a.m.

Marine Resources Commission



Marine Resources Commission

* * * * *

Title of Regulation: VR 450-01-0084. Opening of Deep Water Shoal Area to Relaying.

Statutory Authority: §§ 28.2-201, 28.2-507 and 28.2-816 of the Code of Virginia.

Effective Date: February 23, 1994.

Preamble:

This regulation allows the State Oyster Repletion Program to open the Deep Water Shoal Seed Area for the relaying of oysters.

§ 1. Authority and effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-507 and 28.2-816 of the Code of Virginia.

B. The effective date of this regulation is ~~March 1, 1993~~ February 23, 1994 .

§ 2. Purpose.

The purpose of this regulation is to *allow the State Repletion Program* to open to the relaying of oysters that area known as the Deep Water Shoal Seed Area in the James River.

§ 3. Designated area opened to relaying.

The area described below and known as the Deep Water Shoal Seed Area within Condemnation Areas 23 and 69 in the James River is hereby opened *at the discretion of the conservation and repletion officer* to the relaying of oysters beginning ~~March 1, 1994~~ between the time period March 1 and May 31, 1994 . The seed area is described as follows:

Deep Water Shoal Area: (574.66 acres) Beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, North 302,280.00, East 2,542,360.00; thence North Azimuth 30°49'59", 4,506.99 feet to Corner 2, North 306,150.00, East 2,544,670.00; thence North Azimuth 135°08'57", 5,430.60 feet to Corner 3, North 302,300.00, East 2,548,500.00; thence North Azimuth 212°13'54", 3,487.42 feet to Corner 4, North 299,350.00, East 2,546,640.00; thence North Azimuth 269°10'16", 2,765.29 feet to Corner 5, North 299,310.00, East 2,543,875.00; thence North Azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

§ 4. Season closure.

A. At such time as the harvest of oysters from the Deep Water Shoal Seed Area totals ~~40,000~~ 20,000 bushels, the

relay season shall close and it shall be unlawful for any person to harvest oysters from the area.

B. In the event the ~~40,000~~ 20,000 bushel quota is not harvested, the Deep Water Shoal Seed Area shall be closed to harvest on May 31, ~~1993~~ 1994 .

§ 5. Gear restrictions.

The harvest of oysters from the Deep Water Shoal Seed Area by any gear other than hand tongs is prohibited.

§ 6. Permits and reporting.

Any person participating in the Deep Water Shoal Seed Area relay shall be permitted and shall report as described in §§ 28.2-810, 28.2-811, 28.2-813 and 28.2-814 of the Code of Virginia. In addition, buyers or planters shall report the final disposition of all oysters relayed on forms provided by the commission to allow an evaluation of the harvest success of the program. *Buyers and planters shall have returned the 1993 disposition forms to the commission prior to participating in the 1994 Deep Water Shoal Seed Relay Program.*

§ 7. Penalty.

As set forth in § 28.2-821 of the Code of Virginia, any person violating any provisions of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R94-701; Filed March 16, 1994, 9:56 a.m.

* * * * *

Title of Regulation: VR 450-01-0095. Restrictions on Oyster Harvest.

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: February 23, 1994.

Preamble:

This regulation establishes restriction on the harvest of oysters from all public oyster grounds in the Chesapeake Bay and its tributaries and on all oyster grounds on the Seaside of Eastern Shore.

VR 450-01-0095. Restrictions on Oyster Harvest.

§ 1. Authority, other regulations, and effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ ~~28.2-210~~ 28.2-201 and 28.2-507 of the Code of Virginia.

Marine Resources Commission

B. Other restrictions on oyster harvesting may be found in Chapter 5 (§ 28.2-500 et seq.) of Title 28.2 of the Code of Virginia and in VR 450-01-0008, VR 450-01-0022, VR 450-01-0026, VR 450-01-0027, VR 450-01-0035, VR 450-01-0038, VR 450-01-0084, VR 450-01-0085, and VR 450-01-0086.

C. This emergency regulation replaces previous emergency regulation, VR 450-01-0095, which was made effective ~~October 1, 1993~~ January 26, 1994.

D. The effective date of this emergency regulation is ~~January 26, February 23, 1994.~~

E. This emergency regulation shall terminate on February 24, 1994.

§ 2. Purpose.

The purpose of this regulation is to protect and conserve Virginia's oyster resource, which has been depleted by disease, harvesting, and natural disasters.

§ 3. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster rocks, beds and shoals are as follows:

A. 1. James River Seed Area: ~~January 26, February 23, 1994, through February 24, April 30, 1994.~~

2. Jail Island and Point of Shoals Clean Cull Areas: February 23, 1994, through April 30, 1994.

B. 3. Seaside of Eastern Shore: October 1, 1993, through March 31, 1994.

§ 4. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds in the Chesapeake Bay and its tributaries, except the James River Seed Area and the Jail Island and Point of Shoals Clean Cull Areas: January 1, 1994, through September 30, 1994.

2. James River Seed Area and Jail Island and Point of Shoals Clean Cull Areas: May 1, 1994, through September 30, 1994.

B. 3. All oyster grounds on the Seaside of Eastern Shore: April 1, 1994, through September 30, 1994. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the commission as set forth in § 7 8 of this regulation.

§ 5. Time limit.

Harvest on public grounds in the James River Seed Area

and the Jail Island and Point of Shoals Clean Cull Areas shall be from sunrise to ~~2 p.m.~~ noon, daily. It shall be unlawful for any person to harvest oysters from the public grounds in the James River Seed Area or the Jail Island and Point of Shoals Clean Cull Areas prior to sunrise or after ~~2 p.m.~~ of each day noon, daily.

§ 6. Gear restrictions.

It shall be unlawful for any person to harvest oysters from public oyster grounds with shaft tongs longer than 18 feet in total overall length.

§ 7. Quotas.

In the James River Seed Areas there shall be an oyster harvest quota of 80,000 bushels of seed oysters. The quota will be divided such that 60,000 bushels are planted within the James River and 20,000 bushels are planted in any other area of the Chesapeake Bay and its tributaries. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached.

§ 7. 8. Harvest permit required.

A. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from leased oyster grounds or fee simple ground on the Seaside of Eastern Shore without first obtaining a permit from the Marine Resources Commission.

B. Applicants for the permit shall have paid all rent fees and shall specify the location of the lease of fee simple ground to be harvested and shall verify that the ground is properly marked as specified by VR 450-01-0038.

C. No person shall hold more than two permits at any time.

§ 8. Maximum cull size.

In the James River Seed Area, it shall be unlawful for any person to harvest oysters whose shells measure more than two and one-half inches in length, except as provided in § 9 of this emergency regulation. Oysters greater than two and one-half inches in length shall be returned immediately to their natural beds where taken.

§ 9. Culling tolerance or standards.

Section 5, "Culling Tolerance and Standards," of VR 450-01-0035 is amended such that in the James River Seed Area, if more than one six quart measure of shells and oysters greater than two and one-half inches in length is found per bushel of seed oysters inspected it shall constitute a violation of this regulation.

§ 10. Culling and inspection procedures.

All oysters taken from the seed areas of the James

Marine Resources Commission

River shall be subject to § 6, "Culling and Inspection Procedures," of VR 450-01-0035 and § 9 of this emergency regulation.

§ H. 9. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor. In addition to the penalties prescribed by law, any person violating the provisions of this emergency regulation shall return all oysters harvested to the water, shall cease harvesting on that day, and all harvesting apparatus shall be subject to seizure.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R94-702, Filed March 16, 1994, 9:55 a.m.

GOVERNOR

EXECUTIVE MEMORANDUM 4-94

Subject:

Designation of members of the Governor's Staff who are to comply with the provisions of the disclosure requirements set out under Section 2.1-639.13 of the Code of Virginia.

Purpose:

Persons serving on the staff of the Governor of Virginia hold unique positions of trust. Accordingly, in light of their positions, it is important that they not be compromised or inappropriately affected by conflicts between their personal economic interests and their official duties. It is to assure the foregoing that the provisions of this Executive Memorandum are directed.

Applicability:

This memorandum applies to all persons serving on the staff of the Governor and the staff of the Governor's Secretaries. It does not apply to persons serving in other positions and only temporarily assigned to the Governor's Office or the office of one of the Governor's Secretaries.

Effective Date:

February 24, 1994.

Requirements:

All those persons affected by the requirements of this memorandum who have not heretofore filed disclosure statements in the manner set out under Section 2.1-639.13 of the Code of Virginia are to do so on or before March 10, 1994. Thereafter, all persons serving on the staff of the Governor and the Governor's Secretaries shall file such statements before entering upon their duties and on every January 15th during the continuation of their service.

This Executive Memorandum shall remain in full force and effect until June 30, 1998, unless superseded or rescinded by further Executive Memorandum.

/s/ George Allen
Governor

V.A.R. Doc. No. R94-682; Filed March 2, 1994, 4:19 p.m.

EXECUTIVE ORDER NUMBER SIX (94)

DECLARATION OF A STATE OF EMERGENCY
ARISING FROM A SEVERE WINTER STORM
WHICH IMPACTED THE COMMONWEALTH

During the period of February 10 through 12, 1994, the entire Commonwealth was impacted by a severe winter storm. Effects of this event ranged from heavy rains in the southwestern part of the state to large accumulations of ice, sleet mixed with snow, and moderate rain throughout most of the rest of the state. Flooding, fallen trees, downed power lines, and mud slides blocked roads throughout the affected areas. More than 235,000 homes were left without power. Twenty-eight (28) localities opened public shelters to accommodate those forced to evacuate. Elements of the Departments of Emergency Services, Forestry, and Transportation, along with the Virginia State Police and National Guard, were deployed to deal with the effects of this severe winter storm. I verbally declared a state of emergency at approximately 5:30 p.m. on Friday, February 11, 1994, for the purpose of rendering all possible state assistance to citizens.

The health and general welfare of the citizens of all affected jurisdictions required that state action be taken to help alleviate the conditions which were a result of this situation. I found that these wintry conditions constituted a natural disaster wherein human life was imperiled, as contemplated by Section 44-146.16 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 February 11, 1994, wherein I proclaimed that a state of emergency exists in the Commonwealth and directed that appropriate assistance be rendered by agencies of the state government to alleviate these conditions. Pursuant to Section 44-75.1 (3) and (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 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 heavy snow and wintry conditions.

2. In all instances members of the Virginia Army National Guard shall remain subject to military command as prescribed by Section 44-78.1 of the Code

Governor

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, subject to the requirements and limitations; 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/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/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 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, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

4. The cost incurred by the Virginia 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 994 of the 1993 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 February 11, 1994, upon its signing, and shall remain in full force and effect until June 30, 1994, 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 the Seal of the

Commonwealth of Virginia, this 24th day of February, 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R94-681; Filed March 2, 1994, 4:19 p.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD FOR CONTRACTORS

Title of Regulation: **VR 220-01-00. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 220-01-00:1. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 1, 1994

VA.R. Doc. No. R94-686; Filed March 2, 1994, 12:41 p.m.

BOARD OF DENTISTRY

Title of Regulation: **VR 255-01-1. Virginia Board of Dentistry Regulations.**

Governor's Comment:

I reserve my right to make final comments on the regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 7, 1994

VA.R. Doc. No. R94-683; Filed March 10, 1994, 8:36 a.m.

DEPARTMENT OF FORESTRY

Title of Regulation: **VR 312-01-01. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 312-01-1:1. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 1, 1994

V.A.R. Doc. No. R94-685; Filed March 2, 1994, 12:41 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **VR 425-01-100. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 1, 1994

V.A.R. Doc. No. R94-690; Filed March 2, 1994, 12:41 p.m.

Virginia Apprenticeship Council

Title of Regulation: **VR 425-01-102. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 1, 1994

V.A.R. Doc. No. R94-687; Filed March 2, 1994, 12:41 p.m.

Virginia Safety and Health Codes Board

Title of Regulation: **VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Program.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 7, 1994

V.A.R. Doc. No. R94-689; Filed March 10, 1994, 8:36 a.m.

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Title of Regulation: **VR 425-02-101. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 1, 1994

V.A.R. Doc. No. R94-688; Filed March 2, 1994, 12:41 p.m.

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: **VR 485-50-9302. Regulations Governing Requirements For Proof of Residency To Obtain A Virginia Driver's License or Photo Identification Card.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: March 7, 1994

V.A.R. Doc. No. R94-684; Filed March 9, 1994, 2:44 p.m.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Public Notice

A referendum subject to § 3.1-684.23 of the Code of Virginia will be conducted by mail ballot among Virginia Irish potato producers who produced at least 40,000 pounds of Irish potatoes during 1993.

The purpose of this referendum is to determine if Virginia Irish potato producers are willing to tax themselves for additional research, education, publicity, advertising and other means of promoting the sale and use of Irish potatoes.

The assessment to be voted on is two cents per hundred pounds when sold, to be deducted by the packer, shipper, processor or handler who first purchases Irish potatoes from the producer. The term "handler" shall include a farmer who packs, processes or otherwise performs the function of a handler. The excise tax levied thereon shall be remitted to the Virginia Irish Potato Commission.

Producers must establish their eligibility to vote in this referendum by properly completing and returning a certification form to the Virginia Department of Agriculture and Consumer Services no later than April 22, 1994.

Eligible voters will be mailed a ballot and return envelope on May 20, 1994. Each eligible voter must return the ballot and the ballot must be received by the Director, Division of Marketing, Virginia Department of Agriculture and Consumer Services on or before June 6, 1994.

Forms to certify eligibility will be mailed to all known Irish potato producers. Producers who do not receive forms in the mail may obtain eligibility certification forms from the following sources:

Association of Virginia Potato and Vegetable Growers, Inc.
P.O. Box 26
Onley, Virginia 23418

or

Virginia Department of Agriculture and Consumer Services

Washington Building, Suite 1003
Capitol Square
1100 Bank Street
Richmond, Virginia 23219

Forms may also be obtained from local county extension offices.

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 FAX two copies and 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 25, 1994 - 10 a.m. - Open Meeting

April 26, 1994 - 8 a.m. - Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. Ⓜ

A meeting to (i) review applications; (ii) review correspondence; (iii) conduct review and disposition of enforcement files; (iv) conduct regulatory review; and (v) conduct routine board business. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period; however, the meeting is open to the public. Any person who needs accommodations in order to participate at the meeting should contact Nancy T. Feldman at (804) 367-8590 at least 10 days before the meeting date so that suitable arrangements can be made for an appropriate accommodation.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

Regulatory Review Committee

April 5, 1994 - 9:30 a.m. - Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. Ⓜ

A meeting to:

1. Review fee adjustment options
2. Modify CPE requirements
3. Review reporting requirements for criminal convictions and findings in civil proceedings
4. Change § 5.3 of the regulations by changing "or" to "and"
5. Consider new regulation-license holder to certificate status conversion to license holder
5. Review agreement for endorsement with Canadian provinces
6. Review registration of all CPA businesses
7. Review licensure of out-of-state CPAs doing business in the Commonwealth
8. Review other amendments
9. Consider change in education hours

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

† May 18, 1994 - 9 a.m. - Open Meeting

Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia. Ⓜ

At this regular meeting, the board plans to discuss legislation, regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of the other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

Pesticide Control Board

April 14, 1994 - 10 a.m. - Open Meeting

April 15, 1994 - 9 a.m. - Open Meeting

Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia. Ⓜ

Calendar of Events

10 a.m., April 14, 1994 - Pesticide Control Board committee meetings

9 a.m., April 15, 1994 - A meeting to conduct general business.

Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m., April 15, 1994. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at (804) 371-6558, at least 10 days before the meeting, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

* * * * *

April 14, 1994 - 7 p.m. - Public Hearing
Department of Agriculture and Consumer Affairs, 1100 Bank Street, Room 204, Richmond, Virginia.

May 9, 1994 - 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 Pesticide Control Board intends to amend regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The proposed amendments (i) establish a single pesticide product registration fee and increase the pesticide product registration fee to \$175; (ii) establish a deadline for registering pesticide projects each year and allow for the assessment of a late fee for pesticide products registered after the deadline; (iii) eliminate the conflict between § 3.1-249.52 of the Code of Virginia, which requires renewal and does not differentiate between pesticides classified for restricted use and other pesticides and §§ 2.2 and 2.3, which allow a commercial applicator and registered technician to avoid a late fee for failure to renew by submitting an affidavit certifying that he has not applied pesticides classified for restricted use subsequent to the expiration of his certificate; (iv) eliminate the conflict between § 3.1-249.52 C of the Code of Virginia, which provides the Pesticide Control Board authority to require reexamination of a registered technician not reinstruction as currently required in § 2.3 when the registered technician fails to renew his license within 60 days of the expiration date and establish a reexamination fee of \$15; (v) delete definitions for "commissioner," "department" and "registered

technician," and (vi) add definitions for "brand" and "grade."

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: Marvin A. Lawson, Ph.D., Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Winegrowers Advisory Board

April 19, 1994 - 10 a.m. - Open Meeting
Omni Charlottesville, 235 West Main Street, Charlottesville, Virginia. ☒

A meeting to hear committee and project monitor reports, hear presentations on proposals for funding, and discuss old and new business. Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo at least 14 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, Virginia Winegrowers Advisory Board, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-0481.

ALCOHOLIC BEVERAGE CONTROL BOARD

April 4, 1994 - 9:30 a.m. - Open Meeting
April 18, 1994 - 9:30 a.m. - Open Meeting
Alcoholic Beverage Control Board, 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, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ASBESTOS LICENSING

April 15, 1994 - 9 a.m. - Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **May 12, 1994 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD FOR BARBERS

† **April 4, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) conduct the review and disposition of enforcement files; and (iv) conduct routine board business. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period; however, the meeting is open to the public. Any person who needs accommodations or order to participate at the meeting should contact Nancy T. Feldman at (804) 367-8590 at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **April 27, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by April 20 from the Chesapeake Bay Local Assistance Department.

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 ☎

Central Area Review Committee

† **April 20, 1994 - 10 a.m.** – Open Meeting
† **May 18, 1994 - 10 a.m.** – Open Meeting

† **June 16, 1994 - 2 p.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor Conference Room, 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† **April 21, 1994 - 10 a.m.** – Open Meeting
† **May 26, 1994 - 10 a.m.** – Open Meeting
† **June 9, 1994 - 10 a.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

Regulatory Committee

† **April 14, 1994 - 10 a.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will consider for presentation to the full board recommendations for amending the Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01). 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

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Southern Area Review Committee

† April 27, 1994 - 2 p.m. - Open Meeting

† May 25, 1994 - 10 a.m. - Open Meeting

† June 22, 1994 - 10 a.m. - Open Meeting

Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☐

CHILD DAY-CARE COUNCIL

† April 14, 1994 - 9:30 a.m. - Open Meeting

Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues, concerns and programs that impact child day centers, camps, school age programs, and preschool/nursery schools. The public comment period will be 10 a.m. Please call ahead of time for possible changes in meeting time.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

INTERDEPARTMENTAL REGULATION OF CHILDREN'S FACILITIES

Coordinating Committee

† April 15, 1994 - 8:30 a.m. - Open Meeting

Office of the Coordinator, Interdepartmental Regulation, 730 East Broad Street, 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.

Contact: John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

COMPREHENSIVE SERVICES PREVENTION AND EARLY INTERVENTION STEERING COMMITTEE

† April 15, 1994 - 10 a.m. - Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Conference Room 2, Richmond, Virginia. ☒

The Steering Committee is working at the direction of the State Executive Council to develop recommendations for the organization and development of a comprehensive system of prevention and early intervention services directed at the needs of children and families throughout the state. The Steering Committee is comprised of about 40 members representing citizen, private and public interests.

Contact: Eloise J. Cobb, Ph.D., Comprehensive Services Prevention and Early Intervention Project Coordinator, 700 Centre, 700 E. Franklin St., Suite 710, Richmond, VA 23219, telephone (804) 225-4757.

DEPARTMENT OF CONSERVATION AND RECREATION

Catoctin Creek Scenic River Advisory Board

† April 8, 1994 - 2 p.m. - Open Meeting

Waterford, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☐

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† April 13, 1994 - 10 a.m. - Open Meeting

Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☒

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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† April 13, 1994 - 10 a.m. - Public Hearing

Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to adopt regulations entitled: **VR 230-01-004. Regulations for Human Subject Research.**

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The Human Subject Research Regulations establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162.16 et seq. of the Code of Virginia. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research review committees which review and approve all human research activities. These regulations apply to the Department of Corrections and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants. Human research participants may be either employees or clients of the department.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Written comments may be submitted until May 23, 1994.

Contact: Dr. Larry Guenther, Agency Management Lead Analyst, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

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† **May 11, 1994 - 10 a.m.** – Public Hearing
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

† **June 3, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to adopt regulations entitled: **VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.** These regulations govern the form and review process for proposed agreements between the Director of the Department of Corrections and public or private entity to operate a work program in a state correctional facility for inmates confined therein. The regulations establish both the review process and criteria for evaluating proposed agreements.

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

BOARD FOR COSMETOLOGY

† **May 9, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,

3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

† **April 6, 1994 - 9 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-03-2. Regulations Relating to Private Security Services.** This regulation sets forth and establishes the private security services regulatory program for the Commonwealth of Virginia.

Statutory Authority: § 9-182 of the Code of Virginia.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

† **April 6, 1994 - 1 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☐

A meeting to consider matters relating to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

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† **June 10, 1994 - 10 a.m.** – Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

† **June 6, 1994** – 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 Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-04-4. Crime Prevention Specialists.** The purpose of the proposed regulation is to establish requirements and administrative procedures for individuals employed by local and state law-enforcement agencies who are applying for

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certification as a crime prevention specialist.

Statutory Authority: §§ 9-170, 9-173.14 and 9-173.15 of the Code of Virginia.

Contact: Patrick D. Harris, Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8467.

Committee on Training

† **April 6, 1994 - 9 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☒

A meeting to discuss matters related to training for criminal justice personnel. A public hearing will be held to receive comment on the rules relating to private security services.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

April 12, 1994 - 7 p.m. – Public Hearing
Henrico County Government Administration Building, Parham and Hungary Springs Road, Board Room, Richmond, Virginia.

May 20, 1994 – 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 for the Deaf and Hard-of-Hearing intends to **repeal** regulations entitled: **VR 245-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 245-01-01:1. Public Participation Guidelines**. This regulation requires the director to maintain a list of persons who have requested to be notified of the formation and promulgation of regulations by the department. It also requires the department to receive petitions for rulemaking, to publish a Notice of Intended Regulatory Action prior to promulgating or amending regulations, and to hold a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment. Finally, this regulation allows the director to appoint an ad hoc advisory committee to assist in the review and development of regulations for the department.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

Contact: Leslie G. Hutcheson, Special Projects Manager, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804)

225-2570 or toll-free 1-800-552-7917.

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April 12, 1994 - 7 p.m. – Public Hearing
Henrico County Government Administration Building, Parham and Hungary Springs Road, Board Room, Richmond, Virginia.

May 20, 1994 – 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 for the Deaf and Hard-of-Hearing intends to amend regulations entitled: **VR 245-02-01. Regulation Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices**. This regulation is to screen applicants for the Telecommunications Assistance Program (TAP) and to determine the applicant's contribution towards the purchase of telecommunications equipment, if any. The amendments allow the department to give priority to first-time applicants during times of fiscal constraint. Renewal applicants, individuals who have previously received equipment through the program, must wait five years to submit subsequent applications and must include proof that the original equipment is no longer working. Additionally, amendments may allow an applicant to request an exchange for new equipment which becomes available through TAP and is deemed a more compatible device for the applicant. Finally, amendments allow for those applicants whose income exceeds 150% of the maximum amount established by the Economic Needs Guidelines to be required to contribute 100% of the contractual cost of devices.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Contact: Bruce A. Sofinski, Communications and Technical Programs, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

Advisory Board

† **April 8, 1994 - 10 a.m.** – Open Meeting
Piedmont Virginia Community College, Route 6, Box 1, Charlottesville, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to discuss and develop a workplan for the next biennium to be submitted to the Director of the Department for the Deaf and Hard-of-Hearing. Public comments will not be received.

Contact: Loretta H. Barker, Administrative Assistant, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917 (V/TTY) or

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(804) 225-2570 (V/TTY).

† ~~May 4, 1994 - 10 a.m.~~ - Open Meeting
Department for the Deaf and Hard-of-Hearing, 1100 Bank Street, 12th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular quarterly business meeting. Public comments will not be received.

Contact: Loretta H. Barker, Administrative Assistant, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917 (V/TTY) or (804) 225-2570 (V/TTY).

BOARD OF DENTISTRY

~~April 7, 1994 - 8:30 a.m.~~ - Open Meeting
~~April 8, 1994 - 8:30 a.m.~~ - Open Meeting
Days Inn Airport, 8118 Plantation Road, Roanoke, Virginia. ☒

Formal hearings. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

~~April 14, 1994 - 9 a.m.~~ - Open Meeting
~~April 15, 1994 - 8:30 a.m.~~ - Open Meeting
~~April 16, 1994 - 8:30 a.m.~~ - Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

April 14 - Formal hearings

April 15 - Board business (committee reports, final vote on regulations and regular board business)

April 16 - Board business continued

These are public meetings. A 20-minute public comment period will be held at 8:40 a.m. on April 15; however, no other public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

~~April 25, 1994 - 1:30 p.m.~~ - Public Hearing
Monroe Building, 101 North 14th Street, Richmond, Virginia.

~~May 20, 1994~~ - 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.** These proposed 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 committee to oversee all research involving students that is conducted within the realm of its authority.

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

Contact: Lawrence McCluskey, Lead Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2762.

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~~April 5, 1994 - 7 p.m.~~ - Public Hearing
Luther Jackson Middle School, 3020 Gallows Road, Falls Church, Virginia.

~~June 7, 1994~~ - 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 State Board of Education intends to adopt regulations entitled: **VR 270-01-0060. Minimum Standards for the Accreditation of Child Day Programs Serving Children of Preschool Age or Younger in Public Schools.** These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve preschool age children not subject to compulsory attendance laws.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

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~~April 5, 1994 - 7 p.m.~~ - Public Hearing
Luther Jackson Middle School, 3020 Gallows Road, Falls Church, Virginia.

~~June 7, 1994~~ - 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 State Board of Education intends to adopt regulations entitled: **VR 270-01-0061. Minimum Standards for the Accreditation**

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of Child Day Programs Serving School Age Children Offered in Public Schools. These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve school age children in before- and after-school programs and summer camps.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD

~~April 7, 1994 - 5:30 p.m. - Open Meeting~~
~~May 3, 1994 - 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 Coordinator, Emergency Services, Chesterfield Fire Department, P. O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† April 27, 1994 - 6:30 p.m. - Open Meeting
Gloucester County Administration Building, Conference Room, Gloucester, Virginia. ☒ (Interpreter for the deaf provided upon request)

The agenda for the spring quarterly meeting of the Gloucester Local Emergency Planning Committee will include (i) discussion of the functional exercise currently in progress by the Commonwealth and the local Haz-mat component; and (ii) a review of the public information campaign.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

April 20, 1994 - 7 p.m. - Open Meeting
Henrico County Public Safety Building, Division of Fire, 3rd Floor, Parham and Hungary Spring Roads, 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.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

April 6, 1994 - 2:30 p.m. - Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A meeting to review draft proposal of updated hazardous materials contingency plan.

Contact: L.A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Technical Advisory Committee for the Development of Regulations on the Management of Coal Combustion By-Products

† April 12, 1994 - 10 a.m. - Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Training Room, Glen Allen, Virginia.

A continuation meeting of the committee. Contact should be made prior to the meeting date so as to be informed of any changes in time of meeting, location or meeting cancellations.

Contact: Mike Murphy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4003.

Work Group on Detection/Quantitation Levels

May 4, 1994 - 1:30 p.m. - Open Meeting
Department of Environmental Quality, Lab Training Room, Room 111, 4949 Cox Road, 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 Director of the Department of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for May 18, June 1, June 15, June 29, July 13, July 27, August 10 and August 24. 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, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

VIRGINIA FIRE SERVICES BOARD

April 14, 1994 - 7:30 p.m. - Public Hearing
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue,
Alexandria, Virginia. ☐

A public hearing to discuss fire training and policies. The hearing is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

April 15, 1994 - 9 a.m. - Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue,
Alexandria, Virginia. ☐

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

April 14, 1994 - 10 a.m. - Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue,
Alexandria, Virginia. ☐

A committee meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

April 14, 1994 - 9 a.m. - Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue,
Alexandria, Virginia. ☐

A committee meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

April 14, 1994 - 1 p.m. - Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue,
Alexandria, Virginia. ☐

A committee meeting to discuss fire training and

policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† May 3, 1994 - 9:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ☐

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☐

BOARD OF GAME AND INLAND FISHERIES

† May 4, 1994 - 7 p.m. - Public Hearing
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia.

† June 10, 1994 - 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 Game and Inland Fisheries intends to amend regulations entitled: **VR 325-04-2. Motorboat Numbering.** Section 58.1-3511 of the Code of Virginia requires commissioners of revenue to assess for personal property taxation purposes motorboats based on where the boats are "normally garaged, docked, or parked." Currently § 1 of this regulation requires individuals applying for a certificate of number for a motorboat to indicate on the application the "locality of principal use," not where the boats are "normally garaged, docked, or parked." Adoption of this proposed amendment to § 1 of VR 325-04-2 will enable the department to gather the information necessary to report motorboat registration to the commissioners of revenue in conformity with § 58.1-3511.

The Soldier's and Sailor's Civil Relief Act provides certain exemptions from local personal property taxation assessment for individuals who are on active military duty. The Department of Game and Inland Fisheries does not now ask an individual to indicate military status at the time an application is submitted to register a motorboat. As a result, residents who are eligible for assessment relief are assessed personal property taxes and required to complete additional paperwork at the local level. In rectifying the problem, amending § 5 of VR 325-04-2 will enable the department to provide the commissioners of revenue

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needed military status information so personal property taxes will not be assessed qualifying individuals. This action will also give the Department of Game and Inland Fisheries necessary authority to require individuals to notify the agency in the event there is a change in military status.

Statutory Authority: § 29.1-701 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000.

† **May 19, 1994 - 9 a.m.** – Open Meeting

† **May 20, 1994 - 9 a.m.** – Open Meeting

Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet to discuss whether they should initiate a regulation that will provide for the use of crossbows for hunting by physically impaired individuals on their own property. They will also consider final action that will implement a permit fee schedule in accordance with language included in House Bill 1777 during the 1993 General Assembly session. Other topics of discussion include a review of the agency's audit, a financial status report, review and approval of the agency's capital and operating budgets, and a discussion on legislative proposals for the 1995 General Assembly session. Other general and administrative matters, as necessary, may be discussed and the appropriate action will be taken. The board will hold an executive session.

Please note that the board has changed its meeting procedure. Public comment is now accepted on the first meeting day. If the board completes its announced meeting agenda, they will not meet on May 20, 1994.

Contact: Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

May 4, 1994 - 10 a.m. – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☎

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

DEPARTMENT OF HEALTH (STATE BOARD OF)

April 8, 1994 – 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 355-01-100. Public Participation Guidelines**. These proposed amendments are identical to those contained within the emergency Public Participation Guidelines effective July 1, 1993, and promulgated to maintain the board's compliance with revisions to the Administrative Process Act effective on that same day. These revised guidelines clarify the actions to be taken by the staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The proposed guidelines also identify how the public may initiate consideration of regulations for development or review.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

Contact: Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main Street, Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

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May 6, 1994 – 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 355-30-100. Virginia State Medical Facilities Plan: Diagnostic Imaging Services**. This amendment revises a part of the Diagnostic Imaging Services of the Virginia State Medical Facilities Plan (SMFP) which provides criteria and standards for the approval of certificate of public need projects involving single photon emission computed tomography (SPECT) services. The purpose of this amendment is to allow for an expedited review of projects which involve the replacement of non-SPECT nuclear medicine imaging equipment with equipment which is capable of SPECT. This amendment to the SMFP is being proposed in conjunction with recently proposed amendments to the COPN Regulations (VR 355-30-000) which would allow such projects to be considered in accordance with the 45-day expedited review process rather than the standard 120-day batched review process.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Contact: Wendy V. Brown, Project Review Manager, Office

Calendar of Events

of Resources Development, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

Richmond, VA 23218, telephone (804) 786-4891.

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April 25, 1994 - 1 p.m. - Public Hearing
Fairfax County Government Center, 1200 Government Center Parkway, Conference Room, Fairfax, Virginia.

April 25, 1994 - Written comments may be submitted until this date.

April 27, 1994 - 1 p.m. - Public Hearing
Roanoke County Administration Center, 5204 Benard Drive, 2nd Floor Meeting Room, Roanoke, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.** The regulations provide an incentive to registered nurses in Virginia to become nurse practitioners or nurse midwives and subsequently provide services in medically underserved areas.

April 28, 1994 - 1 p.m. - Public Hearing
Hampton City Hall, 22 Lincoln Avenue, Council Chambers, 8th Floor, Hampton, Virginia.

Statutory Authority: §§ 32.1-12, 32.1-122.5 and 32.1-122.6:02 of the Code of Virginia.

April 29, 1994 - 1 p.m. - Public Hearing
Albemarle County Office Building, 401 McIntire Road, 2nd Floor, Room 7, Charlottesville, Virginia.

Contact: Karen Connelly, Director of Public Health Nursing, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 371-4090 or FAX (804) 371-2911.

May 6, 1994 - 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 adopt regulations entitled: **VR 355-35-700. Swimming Pool Regulations Governing the Posting of Water Quality Results.** The proposed regulations require the owner of a public swimming pool to test and post for public viewing the water quality test results for disinfection residuals, pH, and spa water temperatures.

April 21, 1994 - 10 a.m. - Open Meeting
Radisson Hotel, 700 Settlers Landing Road, Hampton, Virginia. ☒ (Interpreter for the deaf provided upon request)

10 a.m. - 5 p.m. Work session.
7 p.m. - Informal dinner - Radisson Hotel

Statutory Authority: §§ 32.1-12 and 32.1-248.1 of the Code of Virginia.

Contact: Susan R. Rowland, MPA, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3561.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, Office of Environmental Health Services, Suite 115, P.O. Box 2448, Richmond, VA 23219, telephone (804) 786-3559.

April 22, 1994 - 9 a.m. - Open Meeting
Hampton City Hall, 22 Lincoln Street, City Council Chambers, Hampton, Virginia. ☒ (Interpreter for the deaf provided upon request)

Business meeting and adjournment.

April 25, 1994 - Written comments may be submitted until this date.

Contact: Susan R. Rowland, MPA, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3561.

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 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.** The regulations set forth eligibility, criteria, award process, terms, conditions, and circumstances under which Virginia medical scholarships will be awarded.

April 25, 1994 - 7 p.m. - Open Meeting
Rappahannock Community College, Warsaw, Virginia. ☒

May 12, 1994 - 7 p.m. - Open Meeting
Thomas Nelson Community College, Newport News, Virginia. ☒

Statutory Authority: §§ 32.1-12, 32.1-122.5, 32.1-122.6 and 32.1-122.6:01 of the Code of Virginia.

May 16, 1994 - 7 p.m. - Open Meeting
Eastern Shore Community College, Melfa, Virginia. ☒

Contact: Eula Moore, Director, Office of Primary Care Development, Department of Health, P. O. Box 2448,

A meeting to discuss the issue surrounding the potential for repacking of foreign crabmeat in Virginia.

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Contact: Robert J. Wittman, Deputy Director, Department of Health, 1500 E. Main St., Suite 109, Richmond, VA 23219, telephone (804) 786-7937.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† April 26, 1994 - 9:30 a.m. - Open Meeting

† May 24, 1994 - 9:30 a.m. - Open Meeting

Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☒

A monthly meeting.

Contact: Kim Bolden Walker, Public Relations Coordinator, 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

April 12, 1994 - 9 a.m. - Open Meeting

James Madison University, Harrisonburg, Virginia.

May 10, 1994 - 9:30 a.m. - Open Meeting

James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia. ☒

June 14, 1994 - 9 a.m. - Open Meeting

Radford University, Radford, Virginia.

A general business meeting. For more information and a time confirmation, contact the council.

Contact: Anne Pratt, Associate Director, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 371-8017/TDD ☎

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

April 20, 1994 - 10 a.m. - Open Meeting

Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒

A general business meeting of the board.

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

State Review Board

† April 19, 1994 - 10 a.m. - Open Meeting

Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒

A meeting to consider the following properties for

nomination to the National Register of Historic Places.

1. Cedar Hill, Rockbridge County
2. Clifton, Rockbridge County
3. Cuckoo, Louisa County
4. Currie House, Blacksburg, Montgomery County
5. Fort Mattapony, King and Queen County
6. Fredericksburg Town Hall and Market Square, Fredericksburg
7. King-Lancaster-McCoy-Mitchell House, Bristol
8. Maiden Spring, Tazewell County
9. Manassas Industrial School Site, Manassas
10. Mulberry Grove, Rockbridge County
11. Oak Spring Farm, Rockbridge County
12. The Oaks, Christiansburg, Montgomery County
13. Riverview, Port Royal, Caroline County
14. La Riviere, Radford
15. St. John's Episcopal Church, King George County
16. Smithfield, Russell County
17. Townfield, Port Royal, Caroline County

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

April 5, 1994 - 9 a.m. - Open Meeting

† May 3, 1994 - 9 a.m. - Open Meeting

† June 7, 1994 - 9 a.m. - Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

† April 18, 1994 - 7 p.m. - Public Hearing

General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☒

Under the provisions of the Code of Virginia the Board of Housing and Community Development will conduct a public hearing to solicit additional public comment on Sections 310.7, Family Day Homes, and 1010.3, Buildings with One Exit, of VR 394-01-21; Sections 110.6.3, 100.7.3, and 108.6, Family Day Homes, of VR 394-01-22, Section 3205.8, Attendant, of VR 394-01-6 and subsection B of § 2.3, Evidence of Ability and Proficiency, of VR 394-01-2. Written comments

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may be submitted until April 25, 1994, to Norman R. Crumpton.

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

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† ~~May 6, 1994~~ - 1 p.m. - Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, 1st Floor Conference Room, Richmond, Virginia.

† **May 6, 1994** - 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 Housing and Community Development intends to amend regulations entitled: **VR 394-01-103. Multifamily Loan Program.** These guidelines establish the administrative framework for the Virginia Housing Partnership's Multifamily Loan Program as administered by the Department of Housing and Community Development. The guidelines include the scoring criteria for selecting projects and the terms and conditions under which loans and grants will be available. They amend the guidelines published by the department on September 9, 1991. The guidelines have been changed to establish minimum rehabilitation requirements, allow the department to distribute available funds to more than one application round, specify most likely interest rates, authorize the department to charge a commitment fee, and revise the distribution of scoring points.

Statutory Authority: §§ 36-137 and 36-141 et seq. of the Code of Virginia.

Contact: H. Graham Driver, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7122.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† ~~April 19, 1994~~ - 11 a.m. - Open Meeting
Virginia Housing Development Authority, 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; and (iv) consider such other matters and take such other actions as deemed appropriate. Various committees of the Board of Commissioners 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.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† ~~April 11, 1994~~ - 1 p.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices by April 6, 1994.

Contact: Robert H. Kirby, Secretary, Advisory Commission on Intergovernmental Relations, 8th Street Office Building, Room 702, Richmond, VA 23219, telephone (804) 786-6508.

DEPARTMENT OF LABOR AND INDUSTRY

† ~~April 4, 1994~~ - 7 p.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **April 22, 1994** - Written comments may be submitted this through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to repeal regulations entitled: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and In Orchards** and adopt regulations entitled: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.** The regulation prohibits the employment of minors under 16 years of age in specified hazardous occupations on farms, in gardens and in orchards. The prohibited occupations include operating a tractor of over 20 PTO horsepower; operating or assisting to operate other heavy equipment such as pickers, combines, mowers, harvesters, bailers, grinders, augers, and tillers; operating or assisting to operate earthmoving equipment, fork-lifts, potato combines, and chain saws; working in enclosed areas occupied by dangerous animals; working from ladders; driving certain vehicles; working inside enclosed areas containing dangerous atmospheres; handling poisonous chemicals; handling blasting agents; and handling anhydrous ammonia.

The regulation exempts children below the age of 16

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employed by their parents on their own farms, student learners, students in federal extension service and 4-H tractor and machine operation training programs, and students in vocational agricultural training programs. Agricultural employers are required to maintain basic records on minor employees.

The proposed regulation is drafted to be substantively identical to parallel federal child labor regulations insofar as practicable. It is not identical for the following reasons.

In certain cases regarding hazardous occupations, the Code of Virginia is more stringent than the parallel federal regulation. In these matters the department has no discretion and must comply with Virginia statutory law.

The federal child labor regulations have not been revised for many years. Certain training programs required by federal regulations no longer exist. This proposed regulation would permit the use of equivalent currently available training programs.

Since this proposed regulation will replace the Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (VR 425-01-81, effective July 1, 1992), the current regulation is being repealed. The agency filed an emergency regulation on June 30, 1993, which is effective through June 29, 1994.

Statutory Authority: §§ 40.1-6(3) and 40.1-100(A)(9) of the Code of Virginia.

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

Virginia Safety and Health Codes Board

April 22, 1994 – 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 Safety and Health Codes Board intends to repeal regulations entitled: **VR 425-02-11. VOSH Administrative Regulations Manual**. The VOSH Administrative Regulations Manual provides an operational framework of rules and procedures for the administration of the Virginia Occupational Safety and Health Program. Some amendments have been made to the regulation since its initial adoption in 1986. A complete revision of the regulation which will simplify and clarify the language of the administrative manual is being proposed as a new regulation. This regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

† **April 26, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The tentative agenda items for consideration by the board include:

1. Standard for Cadmium in Shipyard Employment, 1915.1027, and Standard for Cadmium in Construction, 1926.1127; Corrections and Technical Amendments.
2. Electric Power Generation, Transmission and Distribution, 1910.269.
3. Final Administrative Regulation for the Virginia Occupational Safety and Health Program, VR 425-02-95.
4. Final public participation guidelines for the Safety and Health Codes Board, VR 425-02-101.
5. Repeal of former VOSH Administrative Regulations Manual, VR 425-02-11.
6. Repeal of former public participation guidelines for Safety and Health Codes Board, VR 425-02-68.

Contact: John J. Crisanti, Director, Environmental Policy, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

DEPARTMENT OF LABOR AND INDUSTRY; SAFETY AND HEALTH CODES BOARD; APPRENTICESHIP COUNCIL

April 22, 1994 – 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 Safety Health Codes Board; Apprenticeship Council intends to repeal regulations entitled: **VR 425-01-68. Public Participation Guidelines**. Public Participation Guidelines were adopted by the Department of Labor and Industry, the Safety and Health Codes Board, and the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the additional provisions required by legislation enacted by the 1993 General Assembly were adopted by the department, board and council prior to July, 1993 and are in effect until June 19, 1994. New guidelines for the department, the Safety and Health Codes Board and the Apprenticeship Council are being promulgated. Therefore, when the new guidelines are adopted, this regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Contact: Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

LIBRARY BOARD

May 9, 1994 - 10:30 a.m. - Open Meeting
Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Archives and Records Management Committee

May 9, 1994 - 9 a.m. - Open Meeting
Virginia State Library and Archives, Office of the State Archivist, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to archives and records management.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Automation and Networking Committee

May 9, 1994 - 9:45 a.m. - Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to automation and networking as they relate to the Virginia State Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Executive Committee

† May 9, 1994 - 8 a.m. - Open Meeting
Virginia State Library and Archives, Office of the State Librarian, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to the State Librarian,

Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

General Library Committee

May 9, 1994 - 9 a.m. - Open Meeting
Virginia State Library and Archives, Office of the Director of the General Library Division, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to the General Library Division as they relate to the Virginia State Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Legislative and Finance Committee

May 9, 1994 - 9:45 a.m. - Open Meeting
Virginia State Library and Archives, Conference Room B, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to legislative and financial matters as they relate to the Virginia State Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

May 9, 1994 - 9 a.m. - Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☐

A meeting to discuss the issues on the agenda for the Library Board to be held later that morning.

Contact: Tony Yankus, Director, Library Development, 11th Street at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2320, toll-free 1-800-336-5266 or (804) 786-3618/TDD

COMMISSION ON LOCAL GOVERNMENT

April 6, 1994 - 11 a.m. - Open Meeting
April 7, 1994 - 9 a.m. - Open Meeting
Carroll County Public Library Meeting Room, 101 Beaver Dam Road, Hillsville, Virginia.

Oral presentation regarding the town of Hillsville's proposed annexation of 3.4 square miles of territory in Carroll County.

Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's

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offices at (804) 786-6508 or (804) 786-1860/TDD ☎

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 805 E. Broad Street, Suite 702, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

April 6, 1994 - 7 p.m. – Public Hearing
Carroll County High School, Route 58, Hillsville, Virginia.

Public hearing regarding the town of Hillsville's proposed annexation of 3.4 square miles of territory in Carroll County.

Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices (804) 786-6508 or (804) 786-1860/TDD ☎

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 805 E. Broad Street, Suite 701, Richmond, VA 23219, telephone (804) 786-6508, or (804) 786-1860/TDD ☎

STATE COUNCIL ON LOCAL DEBT

April 20, 1994 - 11 a.m. – Open Meeting
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the 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 1879, Richmond, VA 23215, telephone (804) 225-4928.

LONGWOOD COLLEGE

Board of Visitors

April 15, 1994 - 9 a.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001 or toll-free 1-800-828-1120/TDD ☎

Facilities and Services Committee

April 5, 1994 - 1:30 p.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒

(Interpreter for the deaf provided upon request)

A meeting to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Finance Committee

April 5, 1994 - 10 a.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Student Affairs Committee

April 7, 1994 - 4:30 p.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY BOARD

April 25, 1994 - 10 a.m. – Open Meeting
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which have 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) 367-3106 or (804) 367-3000/TDD ☎

MARINE RESOURCES COMMISSION

April 26, 1994 - 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; and 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; and 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 6, 1994 - 1:30 p.m.** – Open Meeting
Tyler Building, 1300 East Main Street, 3rd Floor Training Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The meeting will 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, including prenatal care, school health, and teenage pregnancy.

Contact: Pat Avery, Executive Secretary Senior, Department of Health, Office of Family Health Services, 1500 E. Main St., Room 104-B, Richmond, VA 23219, telephone (804) 371-0478.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

April 8, 1994 – 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. Amount, Duration, and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care: Durable Medical Equipment.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, which clarify the requirements and the process for providing durable medical equipment and supplies.

Durable medical equipment, supplies, and appliances

are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

DMAS previously required that a recipient who received durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies were 1) to assess the recipient's needs in the actual environment in which he would be using the items, 2) to determine the quantity of supplies needed to meet his current condition, 3) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and 4) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions imposed by the recipient's current health status. Previously, DMAS never specified those services which will not be covered under home health services program.

In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.

Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition that predicates the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies. The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

In addition to these changes, the population for which

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nutritional supplements will be covered is expanded under home health services. Coverage of oral administration does not include the provision of routine infant formulae.

These proposed regulations will supersede emergency regulations issued in June 1993. In FY 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

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

Written comments may be submitted through April 8, 1994, to Mary Chiles, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

† **May 4, 1994** – 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1923. Methods and Standards for Establishing Payment Rates - Other Types of Care: Establishment of Rate Per Visit.** This action permits additional comment on clarifying language the agency determines is necessary in the permanent regulations. Permanent regulations are required to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The section of the State Plan for Medical Assistance affected by this action is Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates - Other Types of Care, Establishment of Rate Per Visit (VR 460-03-4.1923).

The 1993 General Assembly, in the Appropriations Act (Item 313.P), directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission (JLARC) recommended that a revision be made to the existing statistical methodology.

After the close of the comment period on the proposed regulations, DMAS determined that clarifying language was needed to indicate clearly that Department of Health home health agencies' rates will continue to be determined by using data from its own cost report. Without the clarifying sentence at § 3 B, it might be interpreted that these agencies, which occupy their own unique peer group, were to use data from proprietary freestanding agencies' cost reports.

DMAS' originally proposed regulations were published in the December 27, 1993, Virginia Register for their public comment period from December 28, 1993, to February 25, 1994. No comments were received. Review by the Department of Planning and Budget indicates no objections to the changes. Since the agency has determined that further clarifying changes are needed over those which were originally proposed, it is seeking an additional 30-day period of public comment. There is no fiscal impact for the suggested clarifying language.

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

Written comments may be submitted until May 4, 1994, 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

May 23, 1994 - 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 Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed amendments is to further specify current statutes pertaining to limited licenses and intern and resident licenses, provide standardized reference to schools not approved by an accrediting agency recognized by the board, and respecify examination fees for the Podiatric Medical Licensure Examination (PMLEXIS).

Statutory Authority: §§ 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

Written comments may be submitted until May 23, 1994, to Hilary H. Connor, M.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

Credentials Committee

April 16, 1994 - 8:15 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197.

Executive Committee

April 15, 1994 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, Richmond, Virginia. ☒

The committee will meet in open and closed session to review cases of files requiring administrative action; review legislation enacted by the 1994 General Assembly; review proposed regulations which may need administrative action; adopt amendments for approval of promulgation, specifically VR 465-03-01

and VR 465-06-01, and act upon certain issues as presented. The chairman will entertain public comments on agenda items for 10 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

April 7, 1994 - 9 a.m. - Open Meeting
Sheraton Resort and Conference Center, Route 3 and I-95, Fredericksburg, Virginia. ☒

April 15, 1994 - 1 p.m. - Open Meeting

April 22, 1994 - 1:30 p.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Legislative Committee

April 22, 1994 - 10 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

The committee will meet to review VR 465-02-1, § 4.2., Licensure to Practice Acupuncture and amend the definition of practice; review VR 465-06-1, § 3.1. A to amend educational qualifications; develop a position on testing by the National Board of Podiatry for test score; review and respond to new amendments to the Medical Practice Act passed by the General Assembly; discuss patient management by electronics; and discuss such other items that may be presented to the committee. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

April 8, 1994 - 9 a.m. - Open Meeting

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Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to review and respond to public comments regarding the regulatory review of VR 465-03-01 to develop or delete those regulations which may present a burden to the licensee or the public. The advisory board will also entertain the issue of Test History Verification and reports.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Committee on Physician's Assistant

April 22, 1994 - 2 p.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Board Room 4, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will meet to (i) review the new amendments to the regulations governing prescribing pharmaceutical agents and the process for inclusion in the protocol; (ii) conduct a review of the definitions of supervision; (iii) review the list of schools which meet the requirements for pharmacology; and (iv) conduct such other business which may come before the committee. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

State Human Rights Committee

† April 22, 1994 - 9 a.m. - Open Meeting
Prince William Hospital Center for Psychiatric and Addiction Treatment, 8700 Sudley Road, Route 234, Manassas, Virginia. ☒

A meeting to discuss public and private business relating to the issues of human rights within Department of Mental Health, Mental Retardation and Substance Abuse Services facilities and licensed community programs.

Contact: Elsie D. Little, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Part H Interagency Management Team

† April 7, 1994 - 10:30 a.m. - Open Meeting
Madison Building, 109 Governor Street, 10th Floor Conference Room, Richmond, Virginia. ☒

A monthly meeting of the management team to address issues important to the implementation of a comprehensive system of early intervention services for infants and toddlers with disabilities and their families.

Contact: Kyla Patterson, Part H Administrative Consultant, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† April 27, 1994 - 10 a.m. - Open Meeting
Valley Community Services Board, Staunton, Virginia. ☒

A regular monthly meeting. Agenda to be published on April 20. Agenda can 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.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† May 18, 1994 - 8:30 a.m. - Open Meeting
Virginia Military Institute, Smith Hall, Lexington, Virginia. ☒

Finals meeting of the VMI Board of Visitors, and a regular meeting to receive committee reports; approve awards, distinctions and diplomas; discuss personnel changes; and 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 20, 1994 - 10:30 a.m. - Open Meeting

200-202 North 9th Street, Suite 1015, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A regular meeting to discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, fiscal matters, and to receive reports from staff of the Milk Commission. The commission may consider other matters pertaining to their responsibilities. Any person who needs accommodation in order to participate at this meeting should contact Edward C. Wilson, Jr., Deputy Administrator, at least five days prior to the meeting date so that suitable arrangements can be made for any appropriate accommodations.

Contact: Edward C. Wilson, Jr., Deputy Administrator, Milk Commission, 200-202 N. 9th St., Suite 1015, Richmond, VA 23219-3402, telephone (804) 786-2013 or (804) 786-2013/TDD ☐

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Examiners

April 5, 1994 - 1 p.m. - Public Hearing
Division of Mines, U.S. Route 23 South, Big Stone Gap, Virginia.

April 5, 1994 - 1 p.m. - Public Hearing
Division of Administration, 9th Street Office Building, 202 North 9th Street, 8th Floor, Richmond, Virginia.

May 6, 1994 - 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 Mines, Minerals and Energy's Board of Examiners intends to adopt regulations entitled: **VR 480-04-2. Board of Examiners Certification Regulations.** The purpose of the proposed regulation is to set forth requirements for certification of persons performing specialized tasks in mining.

Statutory Authority: § 45.1-12 of the Code of Virginia.

Contact: Harry Childress, Chief, Division of Mines, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

DEPARTMENT OF MOTOR VEHICLES

April 22, 1994 - 9 a.m. - Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.

April 22, 1994 - 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 Motor Vehicles intends to amend regulations entitled: **VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.** The proposed amendments revise the existing regulations in accordance with the legislative changes made to the Administrative Process Act in 1993.

Statutory Authority: §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1875.

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April 11, 1994 - 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 Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.** The regulation establishes the process and the documentation that will be required by the Department of Motor Vehicles for proof of residency in Virginia.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Written comments may be submitted until April 11, 1994, to Simon J. Stapleton, Department of Motor Vehicles, Room 319, P. O. Box 27412, Richmond, VA 23269-0001.

Contact: Clarence H. Bradbury, Policy Analyst, Department of Motor Vehicles, Room 314, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-0408.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

April 29, 1994 - 7:30 - Open Meeting
Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, Virginia. ☒

An informal discussion about potential Virginia Museum of Natural History projects.

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 ☐

April 30, 1994 - 9 a.m. - Open Meeting

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Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, 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

May 20, 1994 – 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 Nursing intends to adopt regulations entitled: **VR 495-04-1. Public Participation Guidelines**. These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3005 of the Code of Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

Nurse Aide Registry

† **April 17, 1994 - 10 a.m.** – Open Meeting
Department of Motor Vehicles, 850 Widgeon Road, Conference Room, Norfolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **April 12, 1994 - 2 p.m.** – Open Meeting
Hampton ABC Building, 4907 West Mercury Boulevard, Hampton, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with certified nurses aides. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 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 27, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,

5th Floor, Conference Room 1, Richmond, Virginia. ☒

A regularly scheduled meeting.

Contact: Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

April 15, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regular board business and any other matters which may require board action.

Contact: Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

April 22, 1994 – 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 Optometry intends to adopt regulations entitled: **VR 510-01-2. Public Participation Guidelines**. These regulations will replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia.

Written comments may be submitted through April 22, 1994, to Carol Stamey, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth A. Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910.

VIRGINIA OUTDOORS FOUNDATION

† **April 4, 1994 - 10 a.m.** – Open Meeting
Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A general business meeting. Agenda available upon request.

Contact: Leslie H. Grayson, Acting Executive Director, Virginia Outdoors Foundation, P.O. Box 322, Aldie, VA 22001, telephone (703) 327-6118.

BOARD OF PHARMACY

† **April 13, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor Conference Room, Room 2, Richmond, Virginia. ☐

Formal hearings, board meeting, and board to adopt final public participation guidelines (VR 530-01-3). This is a public meeting and there will be a 15-minute public comment period from 9 a.m. to 9:15 a.m.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PROFESSIONAL COUNSELORS

April 11, 1994 – 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 Professional Counselors intends to **repeal** regulations entitled: **VR 560-01-01. Public Participation Guidelines** and adopt regulations entitled: **VR 560-01-01:1. Public Participation Guidelines**. These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Board of Professional Counselors, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9912.

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† **April 15, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☐

A board meeting to conduct general board business, act on committee reports, respond to correspondence, and conduct regulatory review. There will be no public comment.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Board of Professional Counselors, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

Task Force on Certification of Substance Abuse Counselors

† **April 11, 1994 - 10 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☐

A meeting to promulgate regulations governing the practice of certification for substance abuse counselors.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7328.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† **April 18, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☐

A regular quarterly meeting of the board. Agenda items include discussion of 1994 legislative session, upcoming studies by the board, and program review.

Contact: Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564 or (804) 367-9753/TDD ☐

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ADVISORY COUNCIL

† **April 21, 1994 - 9 a.m.** – Open Meeting
Shoney's Inn, 7007 West Broad Street, Conference Room, Richmond, Virginia. ☐ (Interpreter for the deaf provided upon request)

A regular bi-monthly meeting. Time is provided for public comment at the start of the meeting.

Contact: Kenneth Shores, Department for Rights of Virginians with Disabilities, Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042/TDD ☐

BOARD OF PSYCHOLOGY

April 11, 1994 – 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 **repeal** regulations entitled: **VR 565-01-1. Public Participation Guidelines**. and adopt regulations entitled: **VR 565-01-1:1. Public Participation**

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Guidelines. These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3600 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9912.

REAL ESTATE APPRAISER BOARD

† **April 19, 1994 - 10 a.m.** – Open Meeting
† **June 7, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

Complaints Committee

† **April 6, 1994 - 10 a.m.** – Open Meeting
† **May 25, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

REAL ESTATE BOARD

† **April 13, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☐

A formal hearing in regard to the Real Estate Board v. Don C. Vance, File Number 93-00002.

Contact: Barbara B. Tinsley, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8589.

DEPARTMENT OF REHABILITATIVE SERVICES

† **April 12, 1994 - 2:30 p.m.** – Public Hearing
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☐

A public hearing opportunity for people with disabilities and other interested individuals, groups and organizations to help develop the 1995 state plans for vocational rehabilitation supported employment and independent living services. Written comments will be accepted through April 22, 1994, at the address below, or comments may be phoned in to 1-800-552-5019 (voice or TDD) from 2:30-7 p.m. on the day of the hearing. A sign language interpreter will be provided.

Contact: Mary C. Lutkenhaus, Policy Analyst, Department of Rehabilitative Services, Policy and Planning, P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7611 or toll-free 1-800-552-5019/TDD ☐

† **April 15, 1994 - 2:30 p.m.** – Public Hearing
111 Franklin Road, S.E., Suite 250, DDS Conference Room, Roanoke, Virginia. ☐

A public hearing opportunity for people with disabilities and other interested individuals, groups and organizations to help develop the 1995 state plans for vocational rehabilitation supported employment and independent living services. Written comments will be accepted through April 22, 1994, at the address below, or comments may be phoned in to 1-800-552-5019 (voice or TDD) from 2:30-7 p.m. on the day of the hearing. A sign language interpreter will be provided.

Contact: Harold Billings, Program Specialist, Department of Rehabilitative Services, Southwest Regional Office, Brambleton Corporate Center, 3433 Brambleton Avenue, S.W., Roanoke, VA 24018, telephone (703) 776-2740 or toll-free 1-800-552-5019/TDD ☐

† **April 18, 1994 - 2:30 p.m.** – Public Hearing
Department of Rehabilitative Services Tidewater Regional Office, 5365 Robin Hood Road, Suite G, Norfolk, Virginia. ☐

A public hearing opportunity for people with disabilities and other interested individuals, groups and organizations to help develop the 1995 state plans for vocational rehabilitation supported employment and independent living services. Written comments will be accepted through April 22, 1994, at the address below, or comments may be phoned in to 1-800-552-5019 (voice or TDD) from 2:30-7 p.m. on the day of the hearing. A sign language interpreter will be provided.

Contact: Bernard Woodard, Human Services Manager, Department of Rehabilitative Services, Tidewater Regional Office, 5365 Robin Hood Rd., Suite G, Norfolk, VA 23513, telephone (804) 858-6763 or toll-free 1-800-552-5019/TDD ☐

† **April 22, 1994 - 2:30 p.m.** – Public Hearing
Department of Rehabilitative Services, 5904 Old Richmond Highway, Suite 400, Alexandria, Virginia. ☐

A public hearing opportunity for people with disabilities and other interested individuals, groups and

organizations to help develop the 1995 state plans for vocational rehabilitation supported employment and independent living services. Written comments will be accepted through April 22, 1994, at the address below, or comments may be phoned in to 1-800-552-5019 (voice or TDD) from 2:30-7 p.m. on the day of the hearing. A sign language interpreter will be provided.

Contact: Robert Krollman, Program Supervisor, Department of Rehabilitative Services, 5904 Old Richmond Highway, Suite 400, Alexandria, VA 22303, telephone (703) 569-4303 or toll-free 1-800-552-5019/TDD

VIRGINIA RESOURCES AUTHORITY

April 12, 1994 - 9:30 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of March 8, 1994; (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, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

May 10, 1994 - 9:30 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of April 12, 1994; (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, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

April 21, 1994 - 10 a.m. - Open Meeting
Main Street Station, 1500 East Main Street, Suite 115, Richmond, Virginia.

A regular meeting.

Contact: Hazel L.J. Sanon, Secretary, 1500 E. Main St.,

Main St. Station, Suite 115, Richmond, VA 23219, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

April 20, 1994 - 10 a.m. - Open Meeting
County of Henrico Administration Building, 4301 East Parham Road, Board of Supervisors Board Room, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems 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., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

NOTE: EXTENSION OF WRITTEN COMMENT PERIOD
April 6, 1994 - 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 State Board of Social Services intends to adopt regulations entitled: VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record. This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

Statutory Authority: §§ 63.1-25, 63.1-236, and 63.1-236.1 of the Code of Virginia.

Written comments may be submitted until April 6, 1994, to Sandra Sanroma, Department of Social Services, 2nd Floor, 730 E. Broad Street, Richmond, VA 23219-1849.

Contact: Margaret J. Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

April 22, 1994 - 10 a.m. - Public Hearing
Department of Social Services, 730 East Broad Street, 7th Floor Conference Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1

Calendar of Events

of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The amendments propose several changes to the Energy Assistance Program. In fuel assistance, households receiving utility subsidies who must pay some heating expenses out-of-pocket will have their benefits reduced by the amount of the subsidy. Assistance to provide primary fuel and to purchase space heaters for temporary use will no longer be provided through crisis assistance. The cooling assistance component would be eliminated.

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

Written comments may be submitted until May 6, 1994, to Charlene H. Chapman, Program Manager, Energy and Emergency Assistance, 730 East Broad Street, 7th Floor, Richmond, Virginia.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL

~~April 4, 1994 - 1 p.m. - Public Hearing~~
Central Regional Office Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia.

May 21, 1994 - 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 State Board of Social Services and Child Day-Care Council intend to amend regulations entitled: **VR 615-30-01 and VR 175-03-01. General Procedures and Information for Licensure.** The purpose of the proposed amendments is to incorporate new legislation and to simplify and clarify licensing procedures.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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~~April 4, 1994 - 1 p.m. - Public Hearing~~
Central Regional Office Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia.

May 21, 1994 - 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 State Board of Social Services and Child Day-Care Council intend to adopt regulations entitled: **VR 615-38-01 and VR 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.** The purpose of this regulation is to set forth standards and procedures that licensees and Department of Social Services staff must follow in the administration of child day center systems.

Statutory Authority: § 63.1-196.01:1 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

~~April 12, 1994 - 10 a.m. - CANCELLED~~
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

This general business meeting has been cancelled.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

~~† April 14, 1994 - 10 a.m. - Open Meeting~~
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting. Agenda items will include approval of contract and grant allocations for 94-95, legislative update and other items of interest.

Contact: Florence Strother, Office Services Specialist, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 344-5560.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

~~April 4, 1994 - 10 a.m. - Public Hearing~~
Lynchburg District Office, Route 501 (0.26 mile south of intersection at Route 460 and 501), Lynchburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

Calendar of Events

Lynchburg district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

April 6, 1994 - 10 a.m. - Public Hearing
Richmond District Office, Pine Forest Drive off Route 1 (1 mile north of Colonial Heights), Colonial Heights, Virginia. ☎ (Interpreter for the deaf provided upon request)

Richmond district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

April 13, 1994 - 9 a.m. - Public Hearing
Salem District Office, Harrison Avenue (north of Main Street and east of VA 311), Salem, Virginia. ☎ (Interpreter for the deaf provided upon request)

Salem district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

April 15, 1994 - 10 a.m. - Public Hearing
Virginia Highlands Community College, Route 372 (0.5 mile north of I-81 at Exit 7), Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

Bristol district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

April 19, 1994 - 10 a.m. - Public Hearing
Tappahannock/Essex Fire Department, Route 627 (0.4 mile

west of Route 17), Tappahannock, Virginia. ☎ (Interpreter for the deaf provided upon request)

Fredericksburg district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 20, 1994 - 2 p.m. - Open Meeting**
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **April 21, 1994 - 10 a.m. - Open Meeting**
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting, on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

April 22, 1994 - 10 a.m. - Public Hearing
Fairfax City Hall, Fairfax, Virginia. ☎ (Interpreter for the deaf provided upon request)

Northern Virginia district preallocation hearing. A public hearing 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, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

Calendar of Events

June 9, 1994 - 2 p.m. – Public Hearing
Department of Transportation, 1221 East Broad Street,
Auditorium, Richmond, Virginia. ☒ (Interpreter for the
deaf provided upon request)

Final allocation hearing for the eastern districts. Final hearing 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, as well as mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper and Northern Virginia districts.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

June 9, 1994 - 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. Final hearing 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, as well as mass transit for Bristol, Salem, Lynchburg and Staunton districts.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

April 20, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 N. 14th St., 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

April 8, 1994 – 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 Veterinary Medicine intends to adopt regulations entitled: **VR 645-01-0.1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the

board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted through April 8, 1994, to Terri Behr, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth A. Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9915.

VIRGINIA RACING COMMISSION

April 13, 1994 - 9:30 a.m. – Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. ☒

A regular commission meeting will be held and presentations will be made by various breeding associations concerning the state of the horse breeding industry in the Commonwealth of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

April 30, 1994 - 10 a.m. – Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ☒

A quarterly meeting 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 Senior, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

STATE WATER CONTROL BOARD

April 11, 1994 – 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 State Water Control Board intends to amend regulations entitled: **VR 680-21-00. Water Quality Standards (VR 680-21-01.3. Antidegradation Policy).** The purpose of these amendments is to amend the antidegradation policy by

designating five surface waters for special protection as exceptional waters. Applicable federal requirements: The EPA Water Quality Standards Regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish the exceptional waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters. Locality particularly affected: While this proposal affects specific localities (Albemarle, Botetourt, Carroll and Washington Counties), the board does not believe any locality to be adversely affected. In addition, local governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. Informal question and answer period: An informal question and answer period will be held one-half hour before each public hearing. Accessibility to persons with disabilities: The meeting is being held at a 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) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, February 28, 1994. Opportunity for formal hearing: The board will hold a formal (evidential) hearing at a time and place to be established if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23 (b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Monday, March 7, 1994. Request for comments: The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the proposal. Written comments should be directed to Ms. Doneva Dalton at the address below by 4 p.m. on Monday, April 11, 1994. Other information: The board has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact the contact person listed below.

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

Written comments may be submitted until April 11, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Jean Gregory, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

BOARD OF YOUTH AND FAMILY SERVICES

April 14, 1994 - 8:30 a.m. - Open Meeting
Roanoke, Virginia. ☒

A committee meeting from 8:30 to 10 a.m.; general meeting from 10 a.m. to 5 p.m. Meetings to certify programs regulated by the board and to approve policies governing the operation of the Department of Youth and Family Services. For location and more information contact Donald Carignan.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

April 13, 1994 - 10 a.m. - Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A meeting to review the 1994 General Assembly session and discuss the commission's work program for its final year.

Contact: Katherine L. Imhoff, Executive Director, Commission on Population Growth and Development, General Assembly Bldg., 910 Capitol St., Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

CHRONOLOGICAL LIST

OPEN MEETINGS

April 4
Alcoholic Beverage Control Board
Barbers, Board for
† Outdoors Foundation, Virginia

April 5
Accountancy, Board for
- Regulatory Review Committee
Hopewell Industrial Safety Council
† Longwood College
- Facilities and Services Committee
- Finance Committee

April 6
† Criminal Justice Services Board

Calendar of Events

- Committee on Training
- Emergency Planning Committee, Local - Winchester
- Local Government, Commission on
- † Maternal and Child Health Council
- † Real Estate Appraiser Board
- Complaints Committee

April 7

- Dentistry, Board of
- Emergency Planning Committee, Local - Chesterfield County
- † Interagency Management Team, Part H
- Local Government, Commission on
- Longwood College
- Student Affairs Committee
- Medicine, Board on
- Informal Conference Committee

April 8

- Conservation and Recreation, Department of
- Catoctin Creek Scenic River Advisory Board
- † Deaf and Hard-of-Hearing, Department for the
- Advisory Board
- Dentistry, Board of
- Medicine, Board of
- Advisory Board on Physical Therapy

April 11

- † Intergovernmental Relations, Advisory Commission on
- † Professional Counselors, Board of
- Task Force on Certification of Substance Abuse Counselors

April 12

- † Environmental Quality, Department of
- Higher Education, State Council of
- † Nursing, Board of
- Nurse Aide Registry
- Professional Soil Scientists, Board for
- Virginia Resources Authority

April 13

- † Corrections, Board of
- † Pharmacy, Board of
- Population Growth and Development, Commission on
- † Real Estate Board
- Virginia Racing Commission

April 14

- Agriculture and Consumer Services, Department of
- Pesticide Control Board
- † Chesapeake Bay Local Assistance Board
- Regulatory Committee
- † Child Day-Care Council
- Dentistry, Board of
- Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
- † Telecommunications Board, Virginia Public

Youth and Family Services, Board of

April 15

- Agriculture and Consumer Services, Department of
- Pesticide Control Board
- † Asbestos Licensing, Board for
- † Comprehensive Services Prevention and Early Intervention Steering Committee
- Dentistry, Board of
- Fire Services Board, Virginia
- † Interdepartmental Regulation of Children's Facilities, Coordinating Committee for
- † Longwood College
- Board of Visitors
- Medicine, Board of
- Executive Committee
- Informal Conference Committee
- Opticians, Board for
- † Professional Counselors, Board of

April 16

- Dentistry, Board of
- Medicine, Board of
- Credentials Committee

April 18

- Alcoholic Beverage Control Board

April 19

- Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
- † Historic Resources, Department of
- State Review Board
- † Professional and Occupational Regulation, Board for
- † Real Estate Appraiser Board
- † Virginia Housing Development Authority

April 20

- † Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Emergency Planning Committee, Local - Henrico
- † Historic Resources, Board of
- Local Debt, State Council on
- † Milk Commission, State
- † Sewage Handling and Disposal Appeals Review Board
- † Transportation Board, Commonwealth
- Treasury Board

April 21

- † Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- † Health, State Board of
- † Protection and Advocacy for Individuals with Mental Illness Advisory Council
- Sewage Handling and Disposal Advisory Committee
- † Transportation Board, Commonwealth

April 22

- † Health, State Board of
- Medicine, Board of

Calendar of Events

- Legislative Committee
 - Advisory Committee on Physician's Assistants
 - Informal Conference Committee
 - † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- April 25**
Accountancy, Board for
Health, Department of
 - Division of Shellfish Sanitation- † Labor and Industry, Department of
 - Safety and Health Codes Board- † Lottery Board, State

April 26
Accountancy, Board for- † Health Services Cost Review Council, Virginia
- † Marine Resources Commission

April 27
† Chesapeake Bay Local Assistance Board
 - Southern Area Review Committee- † Emergency Planning Committee, Local - Gloucester
- † Mental Health, Mental Retardation and Substances Abuse Services, State Board
- Nursing Home Administrators, Board of

April 29
† Museum of Natural History, Virginia
 - Board of Trustees

April 30
† Museum of Natural History, Virginia
 - Board of Trustees- Visually Handicapped, Department for the
 - Advisory Committee on Services

May 3
† Funeral Directors and Embalmers, Board of- † Hopewell Industrial Safety Council

May 4
† Deaf and Hard-of-Hearing, Department for the
 - Advisory Board- Environmental Quality, Department of
 - Work Group on Detection/Quantitation Levels- Geology, Board for

May 5
Emergency Planning Committee, Local - Chesterfield County

May 9
† Cosmetology, Board for- Library Board, Virginia State
 - Archives and Records Management Committee
 - Automation and Networking Committee
 - Executive Committee
 - General Library Committee
 - Legislative and Finance Committee
 - Public Library Development Committee

May 10
Higher Education, State Council of
Virginia Resources Authority

May 12
† Audiology and Speech-Language Pathology, Board of
Health, Department of
 - Division of Shellfish Sanitation

May 16
Health, Department of
 - Division of Shellfish Sanitation

May 18
† Agriculture and Consumer Services, Board of- † Chesapeake Bay Local Assistance Board
 - Central Area Review Committee- † Virginia Military Institute
 - Board of Visitors

May 19
† Game and Inland Fisheries, Board of

May 20
† Game and Inland Fisheries, Board of

May 24
† Health Services Cost Review Council, Virginia

May 25
† Chesapeake Bay Local Assistance Board
 - Southern Area Review Committee- † Real Estate Appraiser Board
 - Complaints Committee

May 26
† Chesapeake Bay Local Assistance Board
 - Northern Area Review Committee

June 7
† Hopewell Industrial Safety Council- † Real Estate Appraiser Board

June 9
† Chesapeake Bay Local Assistance Board
 - Northern Area Review Committee

June 14
Higher Education, State Council of

June 16
† Chesapeake Bay Local Assistance Board
 - Central Area Review Committee

June 22
† Chesapeake Bay Local Assistance Board
 - Southern Area Review Committee

Calendar of Events

PUBLIC HEARINGS

- April 4**
Labor and Industry, Department of
Social Services and Child Day-Care Council,
Department of
Transportation, Department of
- April 5**
Education, Department of
Mines, Minerals and Energy, Department of
- April 6**
Criminal Justice Services, Department of
Local Government, Commission on
Transportation, Department of
- April 12**
Deaf and Hard-of-Hearing, Department of
† Rehabilitative Services, Department of
- April 13**
Corrections, Department of
Transportation, Department of
- April 14**
Agriculture and Consumer Services, Department of
- Pesticide Control Board
Fire Services Board, Virginia
- April 15**
† Rehabilitative Services, Department of
Transportation, Department of
- April 18**
† Housing and Community Development, Board of
† Rehabilitative Services, Department of
- April 19**
Transportation, Department of
- April 22**
Motor Vehicles, Department of
† Rehabilitative Services, Department of
Social Services, Department of
Transportation, Department of
- April 25**
Education, State Board of
Health, Department of
- April 27**
Health, Department of
- April 28**
Health, Department of
- April 29**
Health, Department of
- May 4**
† Game and Inland Fisheries, Board of
- May 6**
† Housing and Community Development, Board of
- May 11**
† Corrections, Board of
- June 9**
Transportation, Department of
- June 10**
† Criminal Justice Services, Department of