THE VIRGINIA REGISTER

OF REGULATIONS

VOLUME TEN • ISSUE NINETEEN

June 13, 1994

1994

Pages 4955 Through 5168

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

April 1994 through June 1995

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
Volume 10	
Mar. 16, 1994	April 4, 1994
Mar. 30	April 18
April 13	May 2
April 27	May 16
May 11	May 30
May 25	June 13
June 8	June 27
Index 3 - Volume 10	
June 22, 1994	July 11, 1994
July 6	July 25
July 20	Aug. 8
Aug. 3	Aug. 22
Aug. 17	Sept. 5
Aug. 31	Sept. 19
Final Index - Volume 10	
Volume 11	
Sept. 14, 1994	Oct. 3, 1994
Sept. 28	Oct. 17
Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
Nov. 23	Dec. 12
Dec. 7	Dec. 26
Index 1 - Volume 11	
Dec. 21, 1994	Jan. 9, 1995
Jan. 4, 1995	Jan. 23
Jan. 18	Feb. 6
Feb. 1	Feb. 20
Feb. 15	Mar. 6
Mar. 1	Mar. 20
Index 2 - Volume 11	
Mar. 15, 1995	April 3, 1995
Mar. 29	April 17
April 12	May 1
April 26	May 15
May 10	May 29
May 24	June 12
June 7	June 26
Index 3 - Volume 11	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

PROPOSED REGULATIONS

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

STATE WATER CONTROL BOARD

FINAL REGULATIONS

DEPARTMENT OF CONSERVATION AND RECREATION

Board of Conservation and Recreation

Virginia Soil and Water Conservation Board

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

BOARD OF DENTISTRY

BOARD OF GAME AND INLAND FISHERIES

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF NURSING

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Table of Contents

NOTICES OF INTENDED REGULATORY ACTION

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

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution: Open Burning (Rev. FF)** The purpose of the proposed action is to develop regulations which will allow the state to reduce volatile organic compounds (VOC) emissions. Under the federal Clean Air Act (Act), Virginia must reduce these emissions by 15% from the 1990 base year level emissions. This must be done by the end of 1996. The secondary purpose of the proposed action is to provide the administrative mechanism for local governments to assume responsibility for developing and enforcing restrictions on open burning.

Public Meeting: A public meeting will be held by the department in the Board Room, Department of Environmental Quality Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 5 p.m. on June 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 June 23, 1994.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, using a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. Any comments relative to this issue must be submitted in accordance with the procedures described under the "Request for Comments" section above.

Public Hearing Plans: After publication in The Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NOX) in the air react together in the presence of sunlight. VOCs are chemicals contained in gasoline, polishes, paints, varnishes, cleaning fluids, inks, and other household and industrial products. NOX emissions are a byproduct from the combustion of fuels and industrial processes.

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. When concentrations of ozone in the ambient air exceed the federal 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 Act.

Virginia is required by the Act to develop plans to ensure that areas will come into compliance with the federal ozone ambient air quality standard. Failure to develop adequate programs to meet the ozone air quality standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

The Act requires that regional transportation plans and individual highway projects conform with Virginia's air quality plan. Conformity of transportation plans means that emissions from mobile sources must remain within the emissions budget established in the plan. Conformity determinations must be made when Virginia applies for federal highway funds. In order to make conformity determinations, EPA requires Virginia to submit a plan

with an emissions budget and enforceable control measures for implementation of the plan. Once EPA has determined that the plan is complete, aside from the enforceable control measures, Virginia can continue to make conformity determinations provided the enforceable control measures (regulations) are submitted to EPA within one year of the EPA's completeness determination.

A. Northern Virginia Area

The metropolitan Washington area has been designated as a serious nonattainment area under the Act. Consequently, its attainment date is November 15, 1999.

The Act specifies that a plan be developed to ensure that VOC emissions in the area are reduced by 15% by the end of 1996. About half of the VOCs in the area are emitted from cars, trucks, and buses; the other half are emitted from small sources like printing shops, service stations, auto body shops, and people using gasoline-powered equipment, paints, solvents, etc. (Large industrial facilities like power plants and factories emit only about 4.0% of the VOCs in this area.)

The task of assessing the various control options, selecting those control measures which will result in the 15% VOC reductions, and preparing the plan has been assigned by the three states comprising the Metropolitan Washington Area to the Metropolitan Washington Air Quality Committee (MWAQC). MWAQC consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies from Virginia, Maryland, and the District of Columbia. However, the final decision on the 15% emissions reduction plan and submission to EPA rests with each state.

MWAQC has recommended that Maryland, Virginia, and the District of Columbia submit to EPA a plan that includes a number of control measures to provide emission reduction credits required to achieve the 15% VOC emission reduction target. These control measures will require each jurisdiction to amend emissions standards for certain categories of currently regulated VOC sources and create new standards for other uncontrolled sources. These new and revised emissions standards will result in the reduction of VOC emissions as identified in the MWAQC's 15% emissions reduction plan.

Open burning is among the many source types from which VOC emissions reductions have been identified in MWAQC's 15% emissions reduction plan. The total reduction target for the metropolitan Washington area is 133 tons per day of VOC emissions, of which 60 tons must come from the Northern Virginia Nonattainment Area. Of these 60 tons, 2.6 tons must come from open burning. The control of the emissions from open burning, along with other control measures recommended in the MWAQC plan, will provide the 15% reduction in VOC emissions required by the plan.

In addition, the MWAQC plan also establishes the initial emissions budget for point (large stationary), area (small stationary) and mobile sources. This is done by projecting the 1996 emissions as a 15% reduction from the 1990 baseline emissions. In order to make an acceptable conformity determination, Virginia transportation planning organizations must demonstrate that the mobile source emissions will remain within the mobile source portion of the 1996 emissions budget.

On November 15, 1993, Virginia submitted the draft MWAQC plan for EPA review. On January 20, 1994, EPA determined that the plan was complete except for the enforceable control measures which must be submitted as regulations within one year of EPA's completeness determination. In order for Virginia to continue making conformity determinations for highway projects, regulations covering the sources listed above must be submitted to EPA by January 20, 1995.

B. Richmond Area

The Richmond area has been designated as a moderate nonattainment area under the Act. As such, the Act specifies that the area must reduce its emissions of VOCs by 15% by November 15, 1996.

The Act requires that Virginia adopt regulations for sources for which EPA has issued a control technology guideline (CTG) between the time of enactment of the 1990 Amendments to the Act and the attainment date for the nonattainment area. This requirement pertains to moderate or worse nonattainment areas. A CTG defines what is considered to be reasonably available control technology (RACT) for a specific source category. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Since the time of enactment, EPA has published CTGs for several categories of sources. A review of existing sources in the Richmond Nonattainment Area identified several sources in the CTG source categories of industrial waste water operations and synthetic chemical and polymer manufacturing equipment prone to VOC leaks. Consequently, Virginia must develop regulations for these two source types by November 15, 1994.

The Act also provides a process for a state to petition EPA to officially redesignate a nonattainment area to attainment. The Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan. A state may submit both the redesignation request and the maintenance plan at the same time, and the EPA review and approval process for both may proceed on a parallel track. The lack of ozone standard violations in the most recent three-year period prior to the redesignation request being approved by EPA, is another condition that must be met before the area can be redesignated. An area is determined to be in violation of the ozone air quality standard if the three-year average of exceedances at any of the area's monitors is greater than one.

A redesignation request for the Richmond Nonattainment Area was submitted to EPA on November 12, 1992. The Commonwealth was able to meet all of the criteria necessary for requesting redesignation, including the lack of ozone violations during the three-year period between 1990 and 1992. In addition, Virginia submitted a maintenance plan demonstrating that, because of permanent and enforceable measures, emissions over the ten years following redesignation would remain within the standards while allowing for growth in population and vehicle miles traveled.

On August 17, 1993, EPA proposed approval of the request and maintenance plan in the Federal Register. Subsequently, EPA withdrew its original proposed approval and on May 3, 1994, issued a final notice of disapproval. This was because of a number of exceedances of the ozone standard recorded at Richmond area ozone monitors during the summer of 1993, which caused the three-year average of exceedances at one of the Richmond area monitors during 1991, 1992 and 1993 to exceed one. In other words, the air quality in the Richmond area had violated (was not attaining) the ozone standard.

Virginia is now obligated to develop a plan to institute control measures to reduce emissions of VOCs in the area by 15% by the end of 1996. The plan is currently being developed and may call for new regulatory requirements on any of the source types listed in this notice. If this is the case, pertinent regulations will be promulgated to amend existing emissions standards and create emission standards for sources currently unregulated so that the necessary 15% reduction of VOC emissions will be achieved.

C. Hampton Roads Area

The Hampton Roads area has been designated as a marginal nonattainment area under the Act, and its attainment date was November 15, 1993. As such, the Act specifies that certain deficiencies in the regulatory program in place at the time of the Act's reauthorization in 1990 be corrected to bring it in line with EPA policy.

The Act provides a process whereby EPA must determine whether or not a nonattainment area achieves the air quality standard by the attainment date. Within six months after the attainment date for each nonattainment area, EPA must determine whether the area has attained the ozone standard. This is accomplished by reviewing the state's quality-assured air quality data from the previous three-year period. An area is determined to be in violation of the ozone air quality standard if the three-year average of exceedances at any monitor is greater than one. The Hampton Roads area would achieve attainment status as long as the ozone standard of 0.12 ppm was not exceeded on more than three days at any one ozone monitor in the Hampton Roads area during 1991, 1992, and 1993.

Recent air quality data shows, however, that the Hampton Roads area may not have achieved the standard by the required attainment date. If EPA determines that an ozone air quality standard violation has occurred, it must change the area's nonattainment status from marginal to moderate. If the area's status is changed, it is not clear, at this time, which of the control strategies required in moderate nonattainment areas will be mandated for affected sources in the Hampton Roads area. It is possible that Virginia may be obligated to develop a plan to institute control measures to reduce emissions of VOCs in the area, as was required for the Northern Virginia and Richmond areas. Once completed, the plan may call for new regulatory requirements applying to any of the source types listed in this notice. Consequently, pertinent regulations will be promulgated to amend existing emissions standards and create emission standards for sources currently unregulated in order to achieve the necessary reduction of VOC emissions.

In addition, the Governor's Commission on Efficiency in Government has recommended that the responsibility for regulating open burning be transferred from state government to local governments. Not only would local control be more cost effective than state control, it would encourage cities and counties to develop enforcement programs tailored to their individual needs, which vary widely across the state depending on each jurisdiction's population distribution, geography, industry, and other factors.

Alternatives:

1. Draft regulations which will provide for implementation of the plans to reduce VOC emissions from the 1990 base year level by 15% by the end of 1996 in order to make progress toward the attainment of the ozone air quality standard in the nonattainment areas and which meet the provisions of the federal Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the 15% emissions reduction plans, thus jeopardizing Virginia's achievement of its required total reduction target. The sanctions for such a failure are the tame as those listed below in Alternative 3.

3. Take no action to amend the regulations and assume the associated risks. If Virginia fails to submit the regulations by January 20, 1995, for achieving the reductions required by the 15% plan, Virginia will no longer be able to make conformity determinations and will not be able to apply for federal highway funds. Another consequence of failure to implement the 15% emissions reduction plan would be the imposition of sanctions by EPA. These may include withholding federal highway funds or air quality planning grants, requiring new industries to offset emissions to such a degree that economic growth may be hindered, or imposing a federal plan on the state. Furthermore, if a nonattainment area fails to attain the federal standard for ozone by its attainment date, EPA must

reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent control requirements.

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 (new Act) represent the most comprehensive piece of clean air legislation ever enacted to address air quality planning requirements for areas that had not attained the federal air quality standard for ozone (that is, nonattainment areas). The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class. Virginia's ozone 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.

Once the nonattainment areas were defined, each state was then obligated to submit a plan demonstrating how it will attain the air quality standard in each nonattainment area. In the case of general, broad-based plans, the task of assessing the various control options, selecting those control measures which will result in emissions reductions, and preparing the plan must, according to the Act, be assigned by the state to a group consisting of elected officials from the affected localities and representatives of state transportation and air quality planning agencies. However, the final decision as to the contents of the plan and submission of the plan to EPA is the state's responsibility.

A. Northern Virginia Area

For the metropolitan Washington area, classified as a serious nonattainment area, the plan is to be developed and submitted to EPA in three annual phases, starting in the fall of 1992. The first phase of the plan requires that certain specific control measures and other requirements be adopted and submitted to EPA by November 15, 1992; these control measures have been adopted for the Northern Virginia Nonattainment Area. The second phase of a plan requires a strategy to reduce VOCs from the 1990 base year level by 15% by the end of 1996 in order to make progress toward the attainment of the ozone air quality standard. This strategy was due to EPA by November 15, 1993 and has been developed for the Northern Virginia Nonattainment area. The third phase of the plan requires two elements: (i) a strategy to reduce VOCs or NOX from the 1990 base year level by 3.0% per year from 1996 to 1999 and (ii) a demonstration by photochemical modeling to determine the additional amount and appropriate mix of VOCs and NOX emission reductions that are necessary to meet the ozone air quality standard by the attainment date. These elements are due to EPA by November 15, 1994, and any emissions reductions constitute an addition to the 15% emission reduction strategy due in 1993.

B. Richmond Area

For the metropolitan Richmond area, classified as a moderate nonattainment area, the plan is the same as that described above for the Northern Virginia area except that the strategy to reduce VOCs or NOX from the 1990 base year level by 3.0% per year from 1996 to 1999 is not required. Most of the special control measures for phase one of the plan have been completed for this area.

C. Hampton Roads Area

For the Hampton Roads area, classified as a marginal nonattainment area, the only requirement mandated by the Act is that specific regulatory deficiencies be corrected. The regulatory measures to correct these deficiencies were adopted and submitted to EPA prior to November 15, 1992. No new control measures will be required for this area unless EPA changes the area's nonattainment status from marginal to moderate. Should this occur, any or all of the control measures required for moderate be mandated for affected sources in the Hampton Roads area.

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

Written comments may be submitted until 4:30 p.m. on July 1, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

VA.R. Doc. No. R94-984; Filed May 11, 1994, 11:39 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution: Emission Standards for Sources of Volatile Organic Compounds (Rev. RR).** The purpose of the proposed action is to develop regulations which will allow the state to reduce volatile organic compounds (VOC) emissions. Under the federal Clean Air Act (Act), Virginia must reduce these emissions by 15% from the 1990 base year level emissions. This must be done by the end of 1996.

Public Meeting: A public meeting will be held by the department in the Board Room, Department of Environmental Quality Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 5 p.m. on June 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 June 23, 1994.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you want to be on the group, notify the agency contact in writing by 4:30 p.m. on June 23, 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. If you wish to be on the group, you are encouraged to attend the public meeting mentioned above.

Public Hearing Plans: After publication in The Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NOX) in the air react together in the presence of sunlight. VOCs are chemicals contained in gasoline, polishes, paints, varnishes, cleaning fluids, inks, and other household and industrial products. NOX emissions are a byproduct from the combustion of fuels and industrial processes.

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. When concentrations of ozone in the ambient air exceed the federal 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 Act.

Virginia is required by the Act to develop plans to ensure that areas will come into compliance with the federal ozone ambient air quality standard. Failure to develop adequate programs to meet the ozone air quality standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

The Act requires that regional transportation plans and individual highway projects conform with Virginia's air quality plan. Conformity of transportation plans means that emissions from mobile sources must remain within the emissions budget established in the plan. Conformity determinations must be made when Virginia applies for federal highway funds. In order to make conformity determinations, EPA requires Virginia to submit a plan with an emissions budget and enforceable control measures for implementation of the plan. Once EPA has determined that the plan is complete, aside from the enforceable control measures, Virginia can continue to make conformity determinations provided the enforceable control measures (regulations) are submitted to EPA within one year of the EPA's completeness determination.

A. Northern Virginia Area

The metropolitan Washington area has been designated as a serious nonattainment area under the Act. Consequently, its attainment date is November 15, 1999.

The Act specifies that a plan be developed to ensure that VOC emissions in the area are reduced by 15% by the end of 1996. About half of the VOCs in the area are emitted from cars, trucks, and buses; the other half are emitted from small sources like printing shops, service stations, auto body shops, and people using gasoline-powered equipment, paints, solvents, etc. (Large industrial facilities like power plants and factories emit only about 4.0% of the VOCs in this area.)

The task of assessing the various control options, selecting those control measures which will result in the 15% VOC reductions, and preparing the plan has been assigned by the three states comprising the Metropolitan Washington Area to the Metropolitan Washington Air Quality Committee (MWAQC). MWAQC consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies from Virginia, Maryland, and the District of Columbia. However, the final decision on the 15% emissions reduction plan and submission to EPA rests with each state.

MWAQC has recommended that Maryland, Virginia, and the District of Columbia submit to EPA a plan that includes a number of control measures to provide emission reduction credits required to achieve the 15% VOC emission reduction target. These control measures will require each jurisdiction to amend emissions standards for certain categories of currently regulated VOC sources and create new standards for other uncontrolled sources. These new and revised emissions standards will result in the reduction of VOC emissions as identified in the MWAQC's 15% emissions reduction plan.

Currently unregulated sources emitting between 25 and 100 tons per year of VOC emissions, surface cleaning/degreasing operations, graphic arts printing operations, lithographic printing operations, auto body refinishing operations, and sanitary landfill operations are among the many source types from which VOC emissions reductions have been identified in MWAQC's 15% emissions reduction plan. The total reduction target for the metropolitan Washington area is 133 tons per day of VOC emissions, of which 60 tons must come from the Northern Virginia Nonattainment Area. The individual contribution to the overall target for each of the affected source categories is shown in the table below.

Source Category	Reduction Target (TPD)
small sources (25-100 tpy)	0.6
cleaning/degreasing operations	1.5
graphic arts printing operations (including lithographic printing)	1.4
auto body refinishing operations	2.1
sanitary landfill operations	0.4

The control of the emissions from the sources listed above, along with other control measures recommended in the MWAQC plan, will provide the 15% reduction in VOC emissions required by the plan.

In addition, the MWAQC plan also establishes the initial emissions budget for point (large stationary), area (small stationary) and mobile sources. This is done by projecting the 1996 emissions as a 15% reduction from the 1990 baseline emissions. In order to make an acceptable conformity determination, Virginia transportation planning organizations must demonstrate that the mobile source emissions will remain within the mobile source portion of the 1996 emissions budget.

On November 15, 1993, Virginia submitted the draft MWAQC plan for EPA review. On January 20, 1994, EPA determined that the plan was complete except for the enforceable control measures which must be submitted as regulations within one year of EPA's completeness determination. In order for Virginia to continue making conformity determinations for highway projects, regulations covering the sources listed above must be submitted to EPA by January 20, 1995.

B. Richmond Area

The Richmond area has been designated as a moderate nonattainment area under the Act. As such, the Act specifies that the area must reduce its emissions of VOCs by 15% by November 15, 1996. The Act requires that Virginia adopt regulations for sources for which EPA has issued a control technology guideline (CTG) between the time of enactment of the 1990 Amendments to the Act and the attainment date for the nonattainment area. This requirement pertains to moderate or worse nonattainment areas. A CTG defines what is considered to be reasonably available control technology (RACT) for a specific source category. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Since the time of enactment, EPA has published CTGs for several categories of sources. A review of existing sources in the Richmond Nonattainment Area identified several sources in the CTG source categories of industrial wastewater operations and synthetic chemical and polymer manufacturing equipment prone to VOC leaks. Consequently, Virginia must develop regulations for these two source types by November 15, 1994.

The Act also provides a process for a state to petition EPA to officially redesignate a nonattainment area to attainment. The Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan. A state may submit both the redesignation request and the maintenance plan at the same time, and the EPA review and approval process for both may proceed on a parallel track. The lack of ozone standard violations in the most recent three-year period prior to the redesignation request being approved by EPA, is another condition that must be met before the area can be redesignated. An area is determined to be in violation of the ozone air quality standard if the three-year average of exceedances at any of the area's monitors is greater than one.

A redesignation request for the Richmond Nonattainment Area was submitted to EPA on November 12, 1992. The Commonwealth was able to meet all of the criteria necessary for requesting redesignation, including the lack of ozone violations during the three-year period between 1990 and 1992. In addition, Virginia submitted a maintenance plan demonstrating that, because of permanent and enforceable measures, emissions over the ten years following redesignation would remain within the standards while allowing for growth in population and vehicle miles traveled.

On August 17, 1993, EPA proposed approval of the request and maintenance plan in the Federal Register. Subsequently, EPA withdrew its original proposed approval and on May 3, 1994, issued a final notice of disapproval. This was because of a number of exceedances of the

ozone standard recorded at Richmond area ozone monitors during the summer of 1993, which caused the three-year average of exceedances at one of the Richmond area monitors during 1991, 1992 and 1993 to exceed one. In other words, the air quality in the Richmond area had violated (was not attaining) the ozone standard.

Virginia is now obligated to develop a plan to institute control measures to reduce emissions of VOCs in the area by 15% by the end of 1996. The plan is currently being developed and may call for new regulatory requirements on any of the source types listed in this notice. If this is the case, pertinent regulations will be promulgated to amend existing emissions standards and create emission standards for sources currently unregulated so that the necessary 15% reduction of VOC emissions will be achieved.

C. Hampton Roads Area

The Hampton Roads area has been designated as a marginal nonattainment area under the Act, and its attainment date was November 15, 1993. As such, the Act specifies that certain deficiencies in the regulatory program in place at the time of the Act's reauthorization in 1990 be corrected to bring it in line with EPA policy.

The Act provides a process whereby EPA must determine whether or not a nonattainment area achieves the air quality standard by the attainment date. Within six months after the attainment date for each nonattainment area, EPA must determine whether the area has attained the ozone standard. This is accomplished by reviewing the state's quality-assured air quality data from the previous three-year period. An area is determined to be in violation of the ozone air quality standard if the three-year average of exceedences at any monitor is greater than one. The Hampton Roads area would achieve attainment status as long as the ozone standard of 0.12 ppm was not exceeded on more than three days at any one ozone monitor in the Hampton Roads area during 1991, 1992, and 1993.

Recent air quality data shows, however, that the Hampton Roads area may not have achieved the standard by the required attainment date. If EPA determines that an ozone air quality standard violation has occurred, it must change the area's nonattainment status from marginal to moderate. If the area's status is changed, it is not clear, at this time, which of the control strategies required in moderate nonattainment areas will be mandated for affected sources in the Hampton Roads area. It is possible that Virginia may be obligated to develop a plan to institute control measures to reduce emissions of VOCs in the area, as was required for the Northern Virginia and Richmond areas. Once completed, the plan may call for new regulatory requirements applying to any of the source types listed in this notice. Consequently, pertinent regulations will be promulgated to amend existing emissions standards and create emission standards for sources currently unregulated in order to achieve the necessary reduction of VOC emissions.

Alternatives:

1. Draft regulations which will provide for implementation of the plans to reduce VOC emissions from the 1990 base year level by 15% by the end of 1996 in order to make progress toward the attainment of the ozone air quality standard in the nonattainment areas and which meet the provisions of the federal Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the 15% emissions reduction plans, thus jeopardizing Virginia's achievement of its required total reduction target. The sanctions for such a failure are the same as those listed below in Alternative 3.

3. Take no action to amend the regulations and assume the associated risks. If Virginia fails to submit the regulations by January 20, 1995, for achieving the reductions required by the 15% plan, Virginia will no longer be able to make conformity determinations and will not be able to apply for federal highway funds. Another consequence of failure to implement the 15% emissions reduction plan would be the imposition of sanctions by EPA. These may include withholding federal highway funds or air quality planning grants, requiring new industries to offset emissions to such a degree that economic growth may be hindered, or imposing a federal plan on the state. Furthermore, if a nonattainment area fails to attain the federal standard for ozone by its attainment date, EPA must reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent control requirements.

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 (new Act) represent the most comprehensive piece of clean air legislation ever enacted to address air quality planning requirements for areas that had not attained the federal air quality standard for ozone (that is, nonattainment areas). The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class. Virginia's ozone 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.

Once the nonattainment areas were defined, each state was then obligated to submit a plan demonstrating how it will attain the air quality standard in each nonattainment area. In the case of general, broad-based plans, the task of assessing the various control options, selecting those control measures which will result in emissions reductions, and preparing the plan must, according to the Act, be assigned by the state to a group consisting of elected officials from the affected localities and representatives of state transportation and air quality planning agencies. However, the final decision as to the contents of the plan and submission of the plan to EPA is the state's responsibility.

A. Northern Virginia Area

For the metropolitan Washington area, classified as a serious nonattainment area, the plan is to be developed and submitted to EPA in three annual phases, starting in the fall of 1992. The first phase of the plan requires that certain specific control measures and other requirements be adopted and submitted to EPA by November 15, 1992; these control measures have been adopted for the Northern Virginia Nonattainment Area. The second phase of a plan requires a strategy to reduce VOCs from the 1990 base year level by 15% by the end of 1996 in order to make progress toward the attainment of the ozone air quality standard. This strategy was due to EPA by November 15, 1993, and has been developed for the Northern Virginia Nonattainment area. The third phase of the plan requires two elements: (i) a strategy to reduce VOCs or NOX from the 1990 base year level by 3.0% per year from 1996 to 1999 and (ii) a demonstration by photochemical modeling to determine the additional amount and appropriate mix of VOCs and NOX emission reductions that are necessary to meet the ozone air quality standard by the attainment date. These elements are due to EPA by November 15, 1994, and any emissions reductions constitute an addition to the 15% emission reduction strategy due in 1993.

B. Richmond Area

For the metropolitan Richmond area, classified as a moderate nonattainment area, the plan is the same as that described above for the Northern Virginia area except that the strategy to reduce VOCs or NOX from the 1990 base year level by 3.0% per year from 1996 to 1999 is not required. Most of the special control measures for phase one of the plan have been completed for this area.

C. Hampton Roads Area

For the Hampton Roads area, classified as a marginal nonattainment area, the only requirement mandated by the Act is that specific regulatory deficiencies be corrected. The regulatory measures to correct these deficiencies were adopted and submitted to EPA prior to November 15, 1992. No new control measures will be required for this area unless EPA changes the area's nonattainment status from marginal to moderate. Should this occur, any or all of the control measures required for moderate nonattainment areas may be mandated for affected sources in the Hampton Roads area.

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

Written comments may be submitted until 4:30 p.m. on July 1, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Ellen Snyder, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4422.

VA.R. Doc. No. R94-985; Filed May 11, 1994, 11:39 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-50-02. Regulation for Transportation Conformity.** The purpose of the proposed action is to develop a regulation which will establish criteria and procedures for the transportation planning organization to determine whether federally-funded transportation plans, programs, and projects are in conformance with state plans for attaining and maintaining national ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas.

Public Meeting: A public meeting will be held by the department in the Board Room, Department of Environmental Quality Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 5 p.m. on June 29, 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 June 22, 1994.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. Any comments relative to this issue must be submitted in accordance with the procedures described under the "Request for Comments" section above.

Public Hearing Plans: After publication in The Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, including ozone. Ozone is formed when volatile organic compounds and nitrogen oxides in the air react together in the presence of sunlight. The National Ambient Air Quality Standard for ozone was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal 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.

Virginia is required by the Act to develop a State Implementation Plan (SIP) to ensure that nonattainment areas will come into compliance with the federal ozone standard. Failure to develop adequate programs to meet the ozone standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the imposition of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

Section 176(c) of the Act states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make determinations that federally-funded transportation plans, programs, and projects conform with Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Thus, a transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from transportation activities with the SIP rather than simply providing for the implementation of SIP measures. This integration of transportation activities and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

EPA promulgated a rule (58 FR 62188, November 24, 1993) which establishes the criteria and procedures governing the determination of conformity for all federally-funded transportation plans, programs, and projects in nonattainment areas. This rule requires Virginia to submit to EPA, by November 24, 1994, a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity rule promulgated by EPA. The transportation conformity rule requires MPOs and DOT to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

Alternatives:

1. Draft a regulation which will provide processes for determining if transportation plans, programs, and projects will conform to the SIP in order to meet the provisions of the Clean Air Act and associated EPA regulations.

2. Take no action to amend the regulations. However, if Virginia fails to submit the regulation, MPOs and DOT will not be able to make the conformity determinations required of them prior to commencing any applicable project. Another consequence of failure to amend the regulations be the imposition of sanctions by EPA. These may include withholding federal highway funds or air quality planning grants, requiring new industries to offset emissions to such a degree that economic growth may be hindered, or imposing a federal plan on the state.

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

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

Written comments may be submitted until 4:30 p.m. on June 30, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Mary E. Major, Policy Analyst Senior, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4423.

VA.R. Doc. No. R94-986; Filed May 11, 1994, 11:40 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-50-03. Regulation for General Conformity.** The purpose of the proposed action is to develop a regulation which will establish criteria and procedures for federal agencies to determine that federal nontransportation related actions are in conformance with state plans for attaining and maintaining national ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas.

Public Meeting: A public meeting will be held by the department in the Board Room, Department of Environmental Quality Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 5 p.m. on June 29, 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 June 22, 1994.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. Any comments relative to this issue must be submitted in accordance with the procedures described under the "Request for Comments" section above.

Public Hearing Plans: After publication in The Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, including ozone. Ozone is formed when volatile organic compounds and nitrogen oxides in the air react together in the presence of sunlight. The National Ambient Air Quality Standard for ozone was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal 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.

Virginia is required by the Act to develop a State Implementation Plan (SIP) to ensure that nonattainment areas will come into compliance with the federal ozone standard. Failure to develop adequate programs to meet the ozone standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the imposition of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

Section 176(c) of the Act states, "No department, agency, or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires federal agencies to make determinations that general federal actions, such as prescribed burning, military base closings, and real estate developments, conform with Virginia's SIP. (Conformity of transportation plans is covered in a separate rule.) "Conformity" means that a project conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Thus, a federal action must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from federal actions with the SIP rather than simply providing for the implementation of SIP measures. This integration of federal actions and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emission growth projections are not exceeded, emissions reduction targets

are met, and maintenance efforts are not undermined.

EPA promulgated a rule (58 FR 63214, November 30, 1993) which establishes the criteria and procedures governing the determination of conformity for all federal actions in nonattainment areas. This rule requires Virginia to submit to EPA, by November 30, 1994, a revision to the SIP that establishes conformity criteria and procedures consistent with the general conformity rule promulgated by EPA. The general conformity rule (i) covers direct and indirect emissions of ozone and its precursors that are caused by a federal action, are reasonably foreseeable, and can be practicably controlled by a federal agency through its continuing program responsibility; (ii) establishes procedural requirements, including requiring federal agencies to make their conformity determinations available to the public and to air quality regulatory agencies; and (iii) provides options to satisfy air quality criteria, and requires the federal action to also meet any applicable SIP requirements and emission milestones. Each federal agency must determine that any actions covered by the rule conform to the SIP before the action is taken.

Alternatives:

1. Draft a regulation which will provide processes for determining if federal projects will conform to the SIP in order to meet the provisions of the Clean Air Act and associated EPA regulations.

2. Take no action to amend the regulations. However, if Virginia fails to submit the regulation, federal agencies will not be able to make the conformity determinations required of them prior to commencing any applicable project. Another consequence of failure to amend the regulations be the imposition of sanctions by EPA. These may include withholding federal highway funds or air quality planning grants, requiring new industries to offset emissions to such a degree that economic growth may be hindered, or imposing a federal plan on the state.

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

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

Written comments may be submitted until 4:30 p.m. on June 30, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Karen Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4426.

VA.R. Doc. No. R94-987; Filed May 11, 1994, 11:40 a.m.

DEPARTMENT OF CORRECTIONS

† Withdrawal of Notice of Intended Regulatory Action

The Board of Corrections has **WITHDRAWN** the Notice of Intended Regulatory Action for promulgating VR 230-30-009, Day Reporting Center Regulations. The notice was initially published published in 10:3 VA.R. 442 November 1, 1993.

VA.R. Doc. No. R94-1004; Filed May 24, 1994, 12:45 p.m.

DEPARTMENT OF EDUCATION (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 Education intends to consider amending regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed action is to amend existing regulations to conform to statutes amended by the 1989, 1990, 1991, 1994 sessions of the General Assembly and to increase the maximum loan amount for constructing a new school from $2.5 million to $5 million. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-140 and 22.1-142 of Title 22.1 of the Code of Virginia and Article VIII of the Constitution of Virginia.

Written comments may be submitted until June 29, 1994.

Contact: Kathryn S. Kitchen, Division Chief, Finance, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120.

VA.R. Doc. No. R94-966; Filed May 9, 1994, 2:51 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0014. Regulations Governing the Management of the Student's Scholastic Record.** The purpose of the proposed action is to revise the regulations to comport with changes in the Virginia Code and to reflect changes in policies and procedures governing the management of student records. The agency intends to hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 4 and 5(e) of Article VIII of the Constitution of Virginia and §§ 22.1-16 and 22.1-20 of the Code of Virginia.

Written comments may be submitted until June 16, 1994.

Contact: Michelle Hathcock, Associate Specialist,

Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2339.

VA.R. Doc. No. R94-897; Filed April 18, 1994, 3:40 p.m.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-17-300. Fees for Permits Involving Land Application or Marketing or Distribution of Biosolids.** The purpose of the proposed action is to develop a regulation setting forth a fee assessment and collection system for permits issued for land application or marketing or distribution of biosolids. This permit fee system will replace the Virginia Pollution Abatement (VPA) fees for Land Application of Municipal Sludge (VR 680-01-01). A public hearing will be held in July or August 1994.

Statutory Authority: § 32.1-164.5 of the Code of Virginia (Chapter 288, 1994 Acts of Assembly).

Written comments may be submitted until June 17, 1994.

Contact: C.M. Sawyer, P.E., Division Director, Department of Health, Division of Wastewater Engineering, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

VA.R. Doc. No. R94-899; Filed April 20, 1994, 12:30 p.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 355-20-100 (formerly VR 355-20-01). Virginia Radiation Protection Regulations.** The proposed action is to adopt the 1991 version of the "Suggested State Regulations for Control of Radiation" published by the Conference of Radiation Control Program Directors, Inc.; revise the protection standards resulting from changes to 10 CFR 20; and consider adoption of comments solicited from the public. The agency intends to hold a public hearing on the proposed regulation after publication.

Purpose: The purpose of this Notice of Intended Regulatory Action is to solicit public comments regarding revisions to the Virginia Radiation Protection Regulations. The agency intends to adopt the model regulations contained in the document, "Suggested State Regulations for Control of Radiation," published by the Conference of Radiation Control Program Director, Inc. (CRCPD) and available from CRCPD, 205 Capital Avenue, Frankfort, Kentucky 40601, telephone (502) 227-4543. The revisions also include replacing Part V, radiation protection standards, with the new federal Part 10 CFR 20 standards.

A summary of changes proposed by the agency's staff follows:

1. Update regulations from the latest version of the "Suggested State Regulations for Control of Radiation."

2. Implement Code of Virginia provisions for bonding of radioactive material licensees.

3. Remove all references to radioactive materials regulated by NRC and NRC Agreement states in Part IV.

4. Adopt the new federal 10 CFR 20 in Part V, radiation protection standards.

5. Adopt provisions of the Mammography Quality Standards Act.

The agency requests public comment for the following issues:

1. What qualifications should private inspectors have? Should individuals be allowed to work as interns and the supervisor not be on site for all of the surveys performed by the intern?

2. Should there be other categories of private inspectors besides diagnostic x-ray and radiation therapy machines, such as mammography, dental, CT, or others? What qualifications should they have?

3. Should the agency specify equipment used by private inspectors and require proof of equipment calibrations?

4. What data should private inspectors report to the agency for it to certify x-ray machines?

5. Should there be any difference in what data the private inspector provides the agency for compliant machines versus noncompliant machines?

6. Should the inspection procedures be prescriptive, or should the agency provide guidance for the conduct of the inspection, or should the inspection procedure be left to the private inspector's judgment?

7. Should x-ray equipment manufactured prior to September 1974 (the date that the U.S. FDA began certification of x-ray machines manufactured for use in the healing arts) be certified for use in the healing arts after the year 2000?

8. Should portable x-ray machines be used as fixed

machines in dental and medical facilities?

9. Should stretch cords be allowed for dental intraoral and panographic machines?

10. Should dosimetry be eliminated for dental facilities that use machines with stretch cords or have open bay operatories?

11. How should the agency address the issue of exposure versus dose that is reported for occupational workers while performing interventional diagnostic procedures?

12. What limits should be placed on fluoroscopic x-ray machines that have an output rate exceeding 20 R/min?

13. Should nonimage-intensified fluoroscopic machines be certified for use in the healing arts?

14. What elements should a quality assurance program have at a facility with x-ray equipment used in the healing arts? Examples are processor temperature and time, fog measurements, sensitometric measurements, phantom exposure trends, and phantom image scores.

15. How frequently should analytical x-ray diffraction equipment and industrial x-ray equipment be inspected?

16. Should the shielding design of linear accelerators producing beam energies greater than 18 MeV be required to include calculations of neutron production or should the facility measure the neutron production for evaluating the effectiveness of the shielding design?

Any individual or organization interested in participating in the development of specific rules and regulations should also contact the Bureau of Radiological Health and ask to be placed on the interested parties list.

The Radiation Advisory Board will review all public comments and assist the agency in the review and development of the regulations for the Board of Health.

Statutory Authority: § 32.1-299 of the Code of Virginia.

Written comments may be submitted until June 17, 1994.

Contact: Leslie P. Foldesi, Director, Bureau of Radiological Health, 1500 E. Main St., Room 104A, Richmond, VA 23219, telephone (804) 786-5932, FAX (804) 786-6979 or toll-free 1-800-468-0138.

VA.R. Doc. No. R94-755; Filed March 30, 1994, 10:19 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 355-29-100 (Formerly 355-29-01). Regulations Governing Vital Records.** The purpose of the proposed action is to amend fees charged for certification of vital records as authorized by the 1994 General Assembly through passage of SB 402. One public hearing is planned during the public comment period following publication of the proposed revisions.

Statutory Authority: §§ 32.1-273 and 32.1-273.1 (Chapter 373, 1994 Acts of Assembly) of the Code of Virginia.

Written comments may be submitted until June 15, 1994.

Contact: Deborah M. Little, Director, Office of Vital Records and Health Statistics, Department of Health, James Madison Building, Room 305, 109 Governor Street, Richmond, VA 23219, telephone (804) 371-6077.

VA.R. Doc. No. R94-898; Filed April 19, 1994, 11:41 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 355-34-03. Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells.** The purpose of the proposed regulation is to provide a fee, as authorized by the General Assembly in § 32.1-164 of the Code of Virginia, for the issuance of letters indicating the appropriateness of a specific site for an onsite sewage disposal system. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Written comments may be submitted until July 15, 1994.

Contact: Donald J. Alexander, Director, Division of Onsite Sewage and Water, Department of Health, P.O. Box 2448, Suite 117, Richmond, VA 23218-2448, telephone (804) 786-1750, Internet address DAlexand@VDH.BITNET

VA.R. Doc. No. R94-1022; Filed May 25, 1994, 11:04 a.m.

STATE COUNCIL OF HIGHER EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education intends to consider promulgating regulations entitled: **State Postsecondary Review Program.** The purpose of the proposed action is to implement federally mandated provisions of Title IV, Part H, Subpart I of the Higher Education Act of 1965, as amended; and the related federal regulations promulgated by the U.S. Department of Education as 34 CFR Part 667. The agency

intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: Designation of SCHEV as Virginia's SPRE by Governor Wilder, letter of August 31, 1993; and §§ 23-9.6:1 and 23-261 of the Code of Virginia.

Written comments may be submitted until June 30, 1994.

Contact: John Molnar, Coordinator of Institutional Approval, State Council of Higher Education, 101 N. 14th Street, SCHEV, Richmond, VA 23219, telephone (804) 225-2634.

VA.R. Doc. No. R94-962; Filed May 11, 1994, 10:14 a.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 amending regulations entitled: **VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates – Other Types of Care: State Agency Fee Schedule.** The purpose of the proposed action is to implement a new medical and surgical fee schedule for the agency based on the federal Resource Based Relative Value Scale (RBRVS). The agency does not intend to hold a public hearing on this issue.

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

Written comments may be submitted until June 29, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R94-953; Filed May 5, 1994, 11:22 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 amending regulations entitled: **VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care: Reimbursement for Organ Transplantation Services.** The purpose of the proposed action is to modify and clarify the reimbursement methodology for organ transplantation services. The 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 June 15, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R94-900; Filed April 25, 1994, 11:19 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 amending regulations entitled: **VR 460-02-4.1940. Methods and Standards for Establishing Payment Rates - Long-Term Care: NF Payoff and Refinancing Incentives.** The purpose of the proposed action is to provide an incentive of up to 50% of the total amount saved to providers who pay off existing loans and to limit the incentive for providers who refinance existing loans to a maximum of 50% of the total amount saved. The 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 July 13, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA. R. Doc. No. R94-1000; Filed May 24, 1994, 10:24 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 amending regulations entitled: **VR 460-10-2600. Deduction of Incurred Medical Expenses in Determining Countable Income (Spendown).** The purpose of the proposed action is to promulgate regulations concerning the determination of countable income in determining Medicaid eligibility for medically needy individuals to conform to new federal regulations. This 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 July 13, 1994, to Ann Cook, Eligibility Consultant, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R94-1019; Filed May 25, 1994, 11:31 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 amending regulations entitled: **Methods and Standards for Establishing Payment Rates (all providers): Recovery of Overpayments.** The purpose of the proposed action is to prevent Medicaid providers who have terminated a participation agreement owing money to the program from restructuring and reenrolling in the program without making arrangements to repay all moneys owed to the program. This amendment conforms the State Plan to the Code of Virginia based on changes made in 1994. The 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 July 13, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R94-1020; Filed May 25, 1994, 11:31 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 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend sections pertaining to unprofessional conduct, sections pertaining to examinations for chiropractic licensure, and the section pertaining to physician acupuncturists. There will be no public hearing unless requested. The regulations further specify statutory changes.

Statutory Authority: §§ 54.1-2400, 54.1-2914, and 54.1-2931 of the Code of Virginia.

Written comments may be submitted until June 17, 1994, to Hilary H. Conner, M.D., Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R94-896; Filed April 22, 1994, 4:06 p.m.

† 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 465-09-1. Certification for Optometrists.** The purpose of the proposed action is to amend the optometric formulary. Although exempt from the Administrative Process Act, the board is required to publish its notice of intention to amend the list of therapeutic pharmaceutical agents in The Virginia Register. A public hearing will be held on July 22, 1994, at 10 a.m. at 6606 West Broad Street, Richmond, Virginia.

Statutory Authority: § 54.1-2957.2 of the Code of Virginia.

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

VA.R. Doc. No. R94-999; Filed May 19, 1994, 10:07 a.m.

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 465-10-01. Certification of Radiological Technology Practitioners.** The purpose of the proposed action is to amend the regulations due to new statutory changes as mandated by the General Assembly. The agency intends to hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 54.1-2956.8:1 and 54.1-2956.8:2 (Chapter 803, 1994 Acts of Assembly) and § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until June 16, 1994, to Hilary H. Conner, M.D., Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Pharmacy

intends to consider amending regulations entitled: **VR 530-01-1. Regulations of the Board of Pharmacy.** The purpose of the proposed action is to promulgate regulations necessary to implement legislation enacted by the 1994 General Assembly relating to licensure of graduates of foreign schools of pharmacy. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 54.1-2400 (6), 54.1-3307, and 54.1-3312 of the Code of Virginia.

Written comments may be submitted until July 1, 1994.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

VA.R. Doc. No. R94-952; Filed May 1, 1994, 8:45 a.m.

BOARD OF PROFESSIONAL COUNSELORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The proposed regulations establish standards of practice for certified substance abuse counseling including education, supervised experience and examination for certification. The agency intends to hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Written comments may be submitted until June 15, 1994, to Evelyn B. Brown, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Evelyn B. Brown, Executive Director or Bernice Parker, Administrative Assistant, Department of Health Professions, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-7328.

VA.R. Doc. No. R94-901; Filed April 25, 1994, 2:38 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider promulgating regulations entitled: **VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.** The purpose of the proposed action is to establish requirements for certification, criteria for examination and standards of practice for the certification of rehabilitation providers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3510 of the Code of Virginia.

Written comments may be submitted until July 13, 1994.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 West Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

VA.R. Doc. No. R94-1021; Filed May 25, 1994, 11:08 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider repealing regulations entitled: **VR 615-28-01. Minimum Standards for Licensed Independent Foster Homes.** The purpose of the proposed action is to repeal the 1949 Standards for Licensed Independent Foster Homes. Promulgation of new standards for licensed independent foster homes is planned. No public hearings are planned. Comments may be presented to the State Board of Social Services to be considered at its regularly scheduled meeting.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until June 30, 1994, to Doris Jenkins, Division of Licensing Programs, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. R94-964; Filed May 10, 1994, 4:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to promulgate regulations entitled: **VR 615-28-01:1. Minimum Standards for Licensed Independent Foster Homes.** The purpose of the proposed action is to promulgate new standards for independent foster homes to address the issues that will ensure the safety and well-being of children placed in these homes. No public hearings are planned. Comments may be presented to the State Board of Social Services to be considered at its regularly scheduled meeting.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until June 30, 1994,

to Doris Jenkins, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219.

Contact: Peggy Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. R94-965; Filed May 10, 1994, 4:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-46-03. Use of the Uniform Assessment Instrument for Assessing Long-Term Care Needs in Local Departments of Social Services.** The purpose of the proposed action is to set forth the Uniform Assessment Instrument for use in determining care needs for customers accessing any publicly funded long-term care service through local departments of social services. Public hearings are not planned. The board will consider public comments on the proposed regulation at its regularly scheduled meeting.

Statutory Authority: HJR 601 (1993).

Written comments may be submitted until July 1, 1994, to Helen Leonard, Adult Services Program Manager, Department of Social Services, 730 East Broad St., Richmond, VA 23219-1849.

Contact: Peggy Friedenberg, Regulatory Coordinator, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219-1820, telephone (804) 692-1820.

VA.R. Doc. No. R94-963; Filed May 10, 1994, 4:39 p.m.

DEPARTMENT OF TAXATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-3-439. Major Business Facility Job Tax Credit.** The purpose of the proposed action is to promulgate a new regulation which will provide guidance in the computation and recapture of the Major Business Facility Job Tax Credit. The credit was enacted by the 1994 Acts of Assembly (HB 1407; SB 606), effective for taxable years beginning on or after January 1, 1995. A public hearing will be held after publication of the proposed regulation.

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

Written comments may be submitted until July 15, 1994.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

VA.R. Doc. No. R94-1001; Filed May 20, 1994, 12:23 p.m.

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 GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A of the Code of Virginia; however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulations: **VR 325-02. Game.**
VR 325-02-1. In General.
VR 325-02-6. Deer.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Proposed Effective Date: September 8, 1994.

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulations. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, July 14, 1994, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations, or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposals at that time.

Summary:

Summaries are not provided since, in most instances, the summary would be as long as or longer than the full text.

VR 325-02. GAME.

VR 325-02-1. In General.

§ 1. Hunting in the snow.

Except as otherwise provided in VR 325-02-17, § 5, it shall be lawful to hunt game birds and game animals in the snow.

§ 2. Hunting with crossbows, arrows to which any drug, chemical or toxic substance has been added or explosive-head arrows prohibited.

A. Generally.

Except as otherwise provided by law or regulation, it shall be unlawful to use a crossbow, arrows to which any drug, chemical or toxic substance has been added or arrows with explosive heads at any time for the purpose of hunting wild birds or wild animals. A crossbow is defined as any bow that can be mechanically held in the drawn or cocked position.

B. Crossbows permitted for persons with permanent physical disabilities.

Any person, upon receiving a medical doctor's written statement based on a physical examination, and in compliance with written criteria as provided by the Department of Game and Inland Fisheries, declaring such person having permanent physical disabilities which prevent them from hunting with conventional archery equipment, may hunt with a crossbow on their own property during established special archery seasons. The doctor's written statement must be on their person while hunting with a crossbow.

§ 3. Recorded wild animal or wild bird calls or sounds prohibited in taking game; coyotes and crows excepted.

It shall be unlawful to take or attempt to take wild animals and wild birds, with the exception of coyotes and crows, by the use or aid of recorded animal or bird calls or sounds or recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting coyotes with the written permission of the landowner.

§ 4. Live birds or animals as decoys prohibited.

Game birds and game animals shall not be taken by the use or aid of live birds or animals as decoys.

§ 5. Poisoning of wild birds and wild animals prohibited; certain control programs excepted.

It shall be unlawful to put out poison at any time for the purpose of killing any wild birds and wild animals, provided that rats and mice may be poisoned on one's own property. The provisions of this section shall not apply to the Commissioner of Agriculture and Consumer Services, or his representatives or cooperators, and those being assisted in a control program following procedures developed under the "Virginia Nuisance Bird Law."

§ 6. Hunting with dogs or possession of weapons in certain

locations during closed season.

A. National forests and department-owned lands.

It shall be unlawful to have in possession a bow or a gun which is not unloaded and cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains and on national forest lands east of the Blue Ridge Mountains and migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the above-mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

B. Certain counties.

Except as otherwise provided in VR 325-02-1, § 6-1, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

C. Meaning of "possession" of bow or firearm.

For the purpose of this section the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance.

D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands.

E. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or slip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

§ 6-1. Open dog training season.

A. Private lands and certain military areas.

It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill and Fort Pickett. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive waterfowl and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands.

It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

§ 7. Quantico Marine Reservation; training or running dogs.

It shall be unlawful to train deer dogs at any time, or to train or run any dogs in the designated hunting areas between March 1 and September 1, both dates inclusive, within the confines of Quantico Marine Reservation.

§ 8. Quantico Marine Reservation; hunting after sunset prohibited.

It shall be unlawful to hunt with any firearm or bow and arrow after sunset on any day within the confines of Quantico Marine Reservation.

§ 9. Hog Island Wildlife Management Area; waterfowl refuge established.

Hog Island, in Surry County, and all of the waters of the James River within a radius of 1,000 yards contiguous thereto is hereby declared a waterfowl refuge for the purpose of developing a feeding and resting area for such birds.

§ 10. Hog Island Wildlife Management Area; hunting, trapping, etc., prohibited; exception.

It shall be unlawful to hunt, shoot, kill, trap or molest or attempt to hunt, shoot, kill, trap or molest at any time any waterfowl including ducks, geese, brant, or coot, or to hunt, shoot, kill, trap, molest, or attempt to hunt, shoot, kill, trap, or molest any other birds or animals on or in the area described in § 9 of this regulation, except at designated times from waterfowl blinds established by the department, provided that the department may, when

deemed necessary for the better development of said refuge, remove by trapping or otherwise any birds or animals as would not be beneficial to the purposes for which such refuge is established.

§ 11. Hog Island Wildlife Management Area; possession of loaded gun prohibited; exception.

It shall be unlawful to have in possession at any time a gun which is not unloaded and cased or dismantled on that portion of the Hog Island Wildlife Management Area bordering on the James River and lying north of the Surry Nuclear Power Plant, except while hunting deer or waterfowl in conformity with a special permit issued by the department.

§ 12. Disturbing waterfowl adjacent to Lands End Waterfowl Management Area.

It shall be unlawful to take, attempt to take, pursue or disturb waterfowl within the public waters adjacent to the Lands End Waterfowl Management Area located in King George County for such distance offshore as may be established by the board and properly posted so as to give adequate notice to the public.

§ 13. Hunting, etc., prohibited on Buggs Island and certain waters of the Gaston Reservoir.

It shall be unlawful to hunt or have in one's possession a loaded gun on Buggs Island or to shoot over or have a loaded gun upon the water on Gaston Reservoir (Roanoke River) from a point beginning at High Rock and extending to the John H. Kerr Dam.

§ 14. Trapping prohibited except by permit on certain wildlife management areas.

It shall be unlawful to trap except by department permit on the Chicahominy, Barbour's Hill, Briery Creek, Hog Island, Lands End, Pocahontas-Trojan, Powhatan and Saxis Wildlife Management Areas.

§ 15. Molesting, damaging, removing or disturbing traps prohibited; release of game from lawful traps prohibited.

It shall be unlawful to willfully molest, damage or remove any trap, or any lawfully caught bird or animal therefrom, or in any way disturb traps or snares legally set by another person.

§ 16. Marking of traps by person setting.

Any person setting or in possession of a steel leghold or body gripping trap or snare shall have it marked by means of nonferrous metal tag bearing his name and address. This requirement shall not apply to landowners on their own land, nor to a bona fide tenant or lessee within the bounds of land rented or leased by him, nor to anyone transporting any such trap from its place of purchase.

§ 17. Trapping fur-bearing animals damaging property during closed season.

When fur-bearing animals are doing damage to crops or other property, the game warden of the county may issue a permit to the landowner or his lessee to trap such fur-bearing animals as are doing damage. Where such a permit is obtained by a landowner or a lessee, it shall be lawful during the closed season to trap such animals as are doing damage.

§ 18. Restricted use of body-gripping traps in excess of 7-1/2 inches.

The use of body-gripping traps with a jaw spread in excess of 7-1/2 inches is prohibited except when such traps are covered by water.

§ 19. Restricted use of above ground body-gripping traps in excess of five inches.

It shall be unlawful to set above the ground any body-gripping trap with a jaw spread in excess of five inches baited with any lure or scent likely to attract a dog.

§ 20. Restricted use of certain steel leg-hold traps.

It shall be unlawful to set above the ground any steel leg-hold trap with teeth set upon the jaws or with a jaw spread exceeding 6-1/2 inches.

§ 21. Use of deadfalls prohibited; restricted use of snares.

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the top of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner.

§ 22. Dates for setting traps in water.

It shall be unlawful to set any trap in water prior to December 1.

§ 23. Animal population control.

Whenever biological evidence suggests that populations of game animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever the health or general condition of a species, or the threat of human public health and safety indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction during the open season by licensed hunters on areas prescribed by wildlife biologists. Designated game species may be taken in excess of the general bag limits on special permits issued under this section under such conditions as may be prescribed by the director.

§ 24. Wanton waste.

No person shall kill or cripple and knowingly allow any nonmigratory game bird or game animal to be wasted without making a reasonable effort to retrieve the animal and retain it in their possession. Nothing in this section shall permit a person to trespass or violate any state, federal, city or county law, ordinance or regulation.

§ 25. Sunday hunting on controlled shooting areas.

A. Except as otherwise provided in the sections appearing in this regulation, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514. The length of the hunting season on such preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this regulation, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on Sunday on controlled shooting areas in those counties having a population of not less than 54,000, nor more than 55,000, or in any county or city which prohibits Sunday operation by ordinance.

VR 325-02-6. Deer.

§ 1. Open season; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this regulation, it shall be lawful to hunt deer from the third Monday in November through the first Saturday in January, both dates inclusive.

§ 2. Open season; cities and counties west of Blue Ridge Mountains and certain cities and counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the third Monday in November and for 11 consecutive hunting days following in the cities and counties west of the Blue Ridge Mountains (except on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad), and on the Chester F. Phelps and G. Richard Thompson Wildlife Management areas.

§ 2-1. Open season; cities of Virginia Beach, Chesapeake and Suffolk east of Dismal Swamp Line.

It shall be lawful to hunt deer from October 1 through November 30, both dates inclusive, in the cities of Virginia Beach, Chesapeake, and Suffolk east of the Dismal Swamp Line.

§ 2-2. (Repealed.)

§ 2-3. Open season; Back Bay National Wildlife Refuge and False Cape State Park.

It shall be lawful to hunt deer on the Back Bay National Wildlife Refuge and on False Cape State Park from October 1 through October 31.

§ 3. (Repealed.)

§ 4. Bow and arrow hunting.

A. Early special archery.

It shall be lawful to hunt deer with bow and arrow from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. Late special archery season west of Blue Ridge Mountains and certain cities and counties east of Blue Ridge Mountains.

In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer with bow and arrow from the Monday following the close of the general firearms season on deer west of the Blue Ridge Mountains through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains and in the counties of (including cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Either-sex deer hunting days.

Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. Carrying firearms prohibited.

It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery season.

E. Requirements for bow and arrow.

Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. Use of dogs prohibited during bow season.

It shall be unlawful to use dogs when hunting with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the ~~second~~ *third* Monday in

November, both dates inclusive.

G. Crossbows permitted for persons with permanent physical disabilities.

As provided in § 2 B of VR 325-02-1, it shall be lawful for persons whose permanent physical disabilities prevent them from hunting with conventional archery equipment to hunt deer with a crossbow on their own property as provided in subsections A, B, C, D, and F of this section.

§ 5. Muzzleloading gun hunting.

A. Early special muzzleloading season.

It shall be lawful to hunt deer with muzzleloading guns from the first Monday in November through the Saturday prior to the third Monday in November, both dates inclusive, in all cities and counties where hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

B. Late special muzzleloading season west of Blue Ridge Mountains and in certain cities and counties east of Blue Ridge Mountains.

It shall be lawful to hunt deer with muzzleloading guns from the third Monday in December through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains, and east of the Blue Ridge Mountains in the counties of (including the cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad).

C. Either-sex deer hunting days.

Deer of either sex may be taken during the entire early special muzzleloading season in all cities and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands, department-owned lands and Philpott Reservoir) and on the first Saturday only in all cities and counties west of the Blue Ridge (except Buchanan, Dickenson, Lee, Russell (except the Clinch Mountain Wildlife Management Area), Scott, Tazewell (except the Clinch Mountain Wildlife Management Area), Washington (except the Clinch Mountain Wildlife Management Area), Wise and on national forest lands in Page, Rockingham, Shenandoah, and Smyth) and on the Clinch Mountain Wildlife Management Area and east of the Blue Ridge Mountains on national forest lands, state forest lands, state park lands, department-owned lands and on Philpott Reservoir. It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area) and in the counties (including cities within) or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. Provided further it shall be lawful to hunt deer of either sex during the last day only of the last special muzzleloading season in the cities and counties within Dickenson (north of Pound River and west of Russell Fork River), Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area.

D. Use of dogs prohibited.

It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

E. Muzzleloading gun defined.

A muzzleloading gun, for the purpose of this regulation, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single lead projectile or sabot (with a .38 caliber or larger nonjacketed lead projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent). Open or peep sights only (iron sights) are permitted during special muzzleloading seasons.

F. Unlawful to have other firearms in possession.

It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

§ 6. Bag limit; generally; bonus deer permits and tag usage.

The bag limit for deer statewide shall be two a day, three a license year, one of which must be antlerless. Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery season, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted and on Fort Belvior and other special deer problem and harvest management areas identified and so posted by the Department of Game and Inland Fisheries during the special archery, special muzzleloading gun and the general firearms seasons. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

§ 7. General firearms season either-sex deer hunting days; Saturday following third Monday in November and last two hunting days.

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last two hunting days only, in the counties of (including cities within) Alleghany, Augusta, Bath, Bland, Carroll, Craig, Giles, Grayson, Highland, Montgomery, Page (except on national forest

lands), Pulaski (except on the Radford Army Ammunition Plant), Roanoke, Rockbridge, Rockingham (except national forest lands), Shenandoah (except national forest lands), Smyth (except on national forest lands and Clinch Mountain Wildlife Management Area), Wythe and on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area.

§ 8. (Repealed)

§ 9. (Repealed)

§ 10. General firearms season either-sex deer hunting days; full season.

During the general firearms season, deer of either sex may be taken full season, in the counties of (including cities within) Amherst (west of U.S. Route 29, except on national forest lands), Bedford, Botetourt (except on national forest lands), Campbell (west of Norfolk Southern Railroad and in the City of Lynchburg only on private lands for which a special permit has been issued by the chief of police), Clarke, Fairfax (restricted to certain parcels of land by special permit), Floyd, Franklin (except Philpott Reservoir and Turkeycock Mountain Wildlife Management Area), Frederick (except on national forest lands), Henry (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area), Loudoun, Nelson (west of Route 151, except on national forest lands), Patrick (except Fairystone Farms Wildlife Management Area, Fairystone State Park and Philpott Reservoir), Pittsylvania (west of Norfolk Southern Railroad), Warren (except on national forest lands) and on Back Bay National Wildlife Refuge, Fort A.P. Hill, Caledon Natural Area, Camp Peary, Cheatham Annex, Chincoteague National Wildlife Refuge, Dahlgren Surface Warfare Center Base, Dam Neck Amphibious Training Base, Dismal Swamp National Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, False Cape State Park, Fentress Naval Auxiliary Landing Field, Fisherman's Island National Wildlife Refuge, Fort Belvoir, Fort Eustis, Fort Lee, Fort Pickett, Harry Diamond Laboratory, Langley Air Force Base, Naval Air Station Oceana, Northwest Naval Security Group, Presquile National Wildlife Refuge, Quantico Marine Corps Reservation, Radford Army Ammunition Plant, Sky Meadows State Park, York River State Park, Yorktown Naval Weapons Station and Hog Island Wildlife Management Area (except on the Carlisle Tract).

§ 11. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.

During the general firearms season, deer of either sex may be taken the Saturday immediately following the third Monday in November in the counties (including cities within) of Lee, Russell, Scott, Tazewell, Washington, Wise, and on the Clinch Mountain Wildlife Management Area, Buckingham-Appomattox State Forest, Cumberland State Forest and Pocahontas State Forest, Prince Edward State Forest and on national forest lands in Frederick, Page, Shenandoah, Smyth, Rockingham and Warren counties.

§ 12. (Repealed.)

§ 13. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.

During the general firearms season, deer of either sex may be taken on the first Saturday immediately following the third Monday in November and the last six hunting days, in the counties of (including cities within) Middlesex, Mathews, Warren and York (except on Camp Peary, Cheatham Annex and Naval Weapons Station) and on the Horsepen Lake Wildlife Management Area, James River Wildlife Management Area, Occoneechee State Park, Amelia Wildlife Management Area, Briery Creek Wildlife Management Area, Dick Cross Wildlife Management Area, White Oak Mountain Wildlife Management Area and Powhatan Wildlife Management Area and on national forest lands in Amherst, Botetourt and Nelson counties ; and in the Cities of Chesapeake (except on Dismal Swamp National Wildlife Refuge, Fentress Naval Auxiliary Landing Field and on the Northwest Naval Security Group), and Virginia Beach (except on Back Bay National Wildlife Refuge, Dam Neck Amphibious Training Base, Naval Air Station Oceana and, False Cape State Park and Fentress Naval Auxiliary Landing Field).

§ 14. General firearms season either-sex deer hunting days; first three Saturdays following third Monday in November and last 24 hunting days.

During the general firearms season, deer of either sex may be taken on the first three Saturdays immediately following the third Monday in November and on the last 24 hunting days, in the counties of (including cities within) Accomack (except Chincoteague National Wildlife Refuge), Greensville, Isle of Wight, Northhampton (except Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge), Southampton, Surry (except Hog Island Wildlife Management Area), and Sussex, and in the City of Suffolk (except on the Dismal Swamp National Wildlife Refuge).

§ 14.1. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last 12 hunting days.

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last 12 hunting days, in the counties of (including the cities within) Albemarle, Amelia (except Amelia Wildlife Management Area), Amherst (east of U.S. Route 29), Appomattox (except Buckingham-Appomattox State Forest), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area, Campbell (east of Norfolk

Southern Railroad except City of Lynchburg), Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Forest and Presquile National Wildlife Refuge), Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Essex, Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas, Sky Meadows State Park and Quantico Marine Reservation), Fluvanna, Gloucester, Goochland, Greene, Halifax, Hampton (except on Langley Air Force Base), Hanover, Henrico (except Presquile National Wildlife Refuge), James City (except York River State Park), King and Queen, King George (except Caledon Natural Area and Dahlgren Surface Warfare Center), King William, Lancaster, Louisa, Lunenburg, Madison, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nelson (east of Route 151 except James River Wildlife Management Area), New Kent, Newport News (except Fort Eustis), Northumberland, Nottoway (except on Fort Pickett), Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Powhatan (except Powhatan Wildlife Management Area), Prince Edward (except on Prince Edward State Forest and Briery Creek Wildlife Management Area), Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation), Rappahannock, Richmond, Spotsylvania, Stafford (except on Quantico Marine Reservation), Westmoreland, and York (except on Camp Peary, Cheatham Annex and Yorktown Naval Weapons Station).

§ 14.2. General firearms season; bucks only.

During the general firearms season, only deer with antlers visible above the hairline may be taken in that portion of Dickenson County lying north of the Pound River and west of the Russell Fork River and on the Chester F. Phelps Wildlife Management Area, G. Richard Thompson Wildlife Management Area, Chickahominy Wildlife Management Area and on the Carlisle Tract of Hog Island Wildlife Management Area.

§ 15. Tagging deer and obtaining official game tag; by licensee.

A. Detaching game tag from license.

It shall be unlawful for any person to detach the game tag from any license to hunt deer prior to the killing of a deer and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass.

Any person killing a deer shall, before removing the carcass from the place of kill, detach from his special license for hunting deer the appropriate tag and shall attach such tag to the carcass of his kill. Place of kill shall be defined as the location where the animal is first reduced to possession.

C. Presentation of tagging carcass for checking; obtaining official game check card.

Upon killing a deer and tagging same, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the tagged carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the tag attached to the carcass shall be exchanged for an official game check card, which shall be securely attached to the carcass and remain attached until the carcass is processed.

D. Destruction of deer prior to tagging; forfeiture of untagged deer.

It shall be unlawful for any person to destroy the identity (sex) of any deer killed unless and until tagged and checked as required by this section. Any deer not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 16. Tagging deer and obtaining official game tag; by person exempt from license requirement.

Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the person shall be given an official game check card furnished by the department, which shall be securely attached to the carcass and remain attached until the carcass is processed.

§ 17. Hunting prohibited in certain counties.

It shall be unlawful to hunt deer at any time in the counties of Arlington, Buchanan and in that portion of Dickenson County south of the Pound River and east of the Russell Fork River.

§ 18. Hunting with dogs prohibited in certain counties and areas.

A. Generally.

It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of U.S. Route 29), Bedford Campbell (west of Norfolk Southern Railroad, and in the

City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas.

B. Special provision for Greene and Madison counties.

It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison.

§ 19. Hunting with dogs or drives prohibited on Quantico Marine Reservation.

It shall be unlawful to use dogs or to organize drives for the purpose of hunting deer within the confines of Quantico Marine Reservation.

§ 20. Sale of hides.

It shall be lawful to sell hides from any legally taken deer.

VA.R. Doc. No. R94-1010; Filed May 25, 1994, Noon.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: June 17, 1994.

Written comments may be submitted until June 17, 1994.

(See Calendar of Events section for additional information)

Basis: Section 36-55.30:3 of the Code of Virginia authorizes the authority to adopt, amend and repeal regulations to carry into effect the powers and purposes of the authority.

Purpose: The purpose of the proposed amendments is to make eligibility under the authority's single family loan program consistent with federal regulations and customary lending practices and to increase availability of the authority's single family loan program to persons and households of low and moderate income.

Substance: The amendments to the authority's rules and regulations will (i) delete the definition of "family"; (ii) add a definition of "gross income" which shall be synonymous with "gross family income" as currently defined; (iii) define "household," in the context of the financing of a single family dwelling unit, to be two or more individuals living together on the premises as a single nonprofit housekeeping unit; (iv) change "family" to "household" where appropriate; and (v) make minor clarifications and typographical corrections.

Issues: The proposed amendments will, by making the authority's lending policies as to eligibility consistent with those of FHA, VA, FmHA and the private lending industry and with the policies of the Equal Credit Opportunity Act, simplify the administration of the authority's single family programs and will increase the number of persons of low and moderate income who will be eligible for loans under those programs. Because the authority has sufficient funds to provide loans to all expected eligible applicants, the proposed amendments will not adversely affect any persons who would be eligible under the current regulations. The authority is not aware of any programmatic disadvantages for the public which would result from the adoption of the proposed amendments, although there may be objections to the proposed amendments on policy grounds.

Impact: The authority expects that the proposed amendments will result in the authority's financing of 60 additional single family loans annually for persons who would not otherwise be eligible therefor. The authority does not expect that any costs will be incurred for the implementation of and compliance with the proposed amendments. The authority is not aware of any localities that will be particularly affected by the proposed amendments.

Summary:

The proposed amendments to the authority's rules and regulations will (i) delete the definition of "family"; (ii) add a definition of "gross income" which shall be synonymous with "gross family income" as currently defined; (iii) define "household," in the context of the financing of a single family dwelling unit, to be two or more individuals living together on the premises as a single nonprofit housekeeping unit; (iv) change "family" to "household" where appropriate; and (v) make minor clarifications and typographical corrections.

VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

§ 1. Definitions.

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

"Act" means the Virginia Housing Development Authority Act, being Chapter 1.2 (§ 36-55.24 et seq.) of

Title 36 of the Code of Virginia.

"Adjusted family income" means the total annual income of a person or all members of a family residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings, less the total of the credits applicable to such person or family, computed in accordance with the following: (i) a credit in an amount equal to $1,000 for each dependent family member other than such a family member qualifying under (vi) below; (ii) a credit in an amount equal to the lesser of $1,000 or 10% of such total annual income; (iii) a credit in an amount equal to all income of such person or any such family member of an unusual or temporary nature and not related to such person's or family member's regular employment, to the extent approved by the executive director; (iv) a credit in an amount equal to all earnings of any family member who is a minor under 18 years of age or who is physically or mentally handicapped, as determined on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; (v) a credit in an amount equal to such person or family's medical expenses, not compensated for or covered by insurance, in excess of 3.0% of such total annual income; and (vi) a credit in an amount equal to 1/2 of the total annual income of all family members over 18 years of age who are secondary wage earners in the family, provided, however, that such credit shall not exceed the amount of $2,500. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may own or occupy a single family dwelling unit or multi-family residential housing development, the authority may provide in its rules and regulations that the adjusted family income shall be computed, for the purpose of determining eligibility for ownership or occupancy of such single family dwelling unit or the dwelling units in such multi-family residential housing development (or, if so provided in the applicable rules and regulations of the authority, only those dwelling units in such development which are subject to such federal income limitations), in the manner specified by such federal law or rules and regulations (subject to such modifications as may be provided in or authorized by the applicable rules and regulations of the authority) rather than in the manner provided in the preceding sentence.

"Applicant" means an individual, corporation, partnership, limited partnership, joint venture, trust, firm, association, public body or other legal entity or any combination thereof, making application to receive an authority mortgage loan or other assistance under the Act.

"Application" means a request for an authority mortgage loan or other assistance under the Act.

"Authority" means the Virginia Housing Development Authority.

"Authority mortgage loan" or *"mortgage loan"* means a loan which is made or financed or is to be made or financed, in whole or in part, by the authority pursuant to these rules and regulations and is secured or is to be secured by a mortgage.

"Board" means the Board of Commissioners of the authority.

"Dwelling unit" or *"unit"* means a unit of living accommodations intended for occupancy by one person or family.

"Executive director" means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board.

~~"Family" means, in the context of the financing of a single family dwelling unit, two or more individuals related by blood, marriage or adoption, living together on the premises as a single nonprofit housekeeping unit. In all contexts other than the financing of a single family dwelling unit, "family" means two or more individuals living together in accordance with law.~~

"FHA" means the Federal Housing Administration and any successor entity.

"For-profit housing sponsor" means a housing sponsor which is organized for profit and may be required by the authority to agree to limit its profit in connection with the sponsorship of authority financed housing in accordance with the terms and conditions of the Act and these rules and regulations and subject to the regulatory powers of the authority.

"Gross family income" or "gross income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay; plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income; plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

"Household" means, in the context of the financing of a single family dwelling unit, two or more individuals living together on the premises as a single nonprofit housekeeping unit.

"Multi-family dwelling unit" means a dwelling unit in multi-family residential housing.

"Nonprofit housing sponsor" means a housing sponsor which is organized not for profit and may be required by the authority to agree not to receive any limited dividend

distributions from the ownership and operation of a housing development.

"Person" means:

1. An individual who is 62 or more years of age;

2. An individual who is handicapped or disabled, as determined by the executive director on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; or

3. An individual who is neither handicapped nor disabled nor 62 or more years of age; provided that the board may from time to time by resolution (i) limit the number of, fix the maximum number of bedrooms contained in, or otherwise impose restrictions and limitations with respect to single family dwelling units that may be financed by the authority for occupancy by such individuals and (ii) limit the percentage of multi-family dwelling units within a multi-family residential housing development that may be made available for occupancy by such individuals or otherwise impose restrictions and limitations with respect to multi-family dwelling units intended for occupancy by such individuals.

"Rent" means the rent or other occupancy charge applicable to a dwelling unit within a housing development operated on a rental basis or owned and operated on a cooperative basis.

"Reservation" means the official action, as evidenced in writing, taken by the authority to designate a specified amount of funds for the financing of a mortgage loan on a single family dwelling unit.

"Single family dwelling unit" means a dwelling unit in single family residential housing.

The foregoing words and terms, when used in any other rules and regulations of the authority, shall have the same meaning as set forth above, unless otherwise defined in such rules and regulations. Terms defined in the Act and used and not otherwise defined herein shall have the same meaning ascribed to them in the Act.

§ 2. Eligibility for occupancy.

A. The board shall from time to time establish, by resolution or by rules and regulations, income limitations with respect to single family dwelling units financed or to be financed by the authority. Such income limits may vary based upon the area of the state, type of program, the size and circumstances of the person or ~~family~~ *household* , the type and characteristics of the single-family dwelling unit, and any other factors determined by the board to be necessary or appropriate for the administration of its programs. Such resolution or rules and regulations shall specify whether the person's or ~~family's~~ *household's* income shall be calculated as adjusted family income or gross ~~family~~ income. To be considered eligible for the financing of a single family dwelling unit, a person or ~~family~~ *household* shall not have an adjusted family income or gross ~~family~~ income, as applicable, which exceeds the applicable limitation established by the board. It shall be the responsibility of each applicant for the financing of a single family dwelling unit to report accurately and completely his adjusted family income or gross ~~family~~ income, as applicable, ~~family~~ *household* composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority with verification thereof.

B. To be considered eligible for occupancy of a multi-family dwelling unit financed by an authority mortgage loan, a person or family shall not have an adjusted family income greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November 15, 1991, seven times the total annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the board may from time to time establish, by resolution or by rules and regulations, lower income limits for occupancy of such dwelling unit; and provided further that in the case of any dwelling unit for which no amounts are payable by or on behalf of such person or family or the amounts payable by or on behalf of such person or family are deemed by the board not to be rent, the income limits shall be established by the board by resolution or by rules and regulations; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above.

C. It shall be the responsibility of the housing sponsor to examine and determine the income and eligibility of applicants for occupancy of multi-family dwelling units, report such determinations to the authority in such form as the executive director may require, reexamine and redetermine the income and eligibility of all occupants of such dwelling units every two years or at more frequent intervals if required by the executive director, and report such redeterminations to the authority in such form as the executive director may require. It shall be the responsibility of each applicant for occupancy of a multi-family dwelling unit, and of each occupant of such dwelling units, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the housing sponsor and the authority with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

D. With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in subsection C of this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the executive director may direct or permit the housing sponsor to terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit. If any person or family residing in a housing development which is a cooperative is so required to be removed from the housing development, such person or family shall be discharged from any liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy in such cooperative and any additional sums payable to such person or family in accordance with a schedule prescribed or approved by the authority, subject however to the terms of any instrument or agreement relating to such cooperative or the occupancy thereof.

§ 3. Forms.

Forms of documents, instruments and agreements to be employed with respect to the processing of applications, the making or financing of loans under these rules and regulations, the issuance and sale of authority notes and bonds, and any other matters relating to such loans and the implementation and administration of the authority's programs shall be prepared, revised and amended from time to time under the direction and control of the executive director.

§ 4. Interest rates.

The executive director shall establish the interest rate or rates to be charged ~~to the housing sponsor or person or family~~ in connection with any loan made or financed under these rules and regulations. To the extent permitted by the documents relating to the loan, the executive director may adjust at any time and from time to time the interest rate or rates charged on such loan. Without limiting the foregoing, the interest rate or rates may be adjusted if such adjustment is determined to be necessary or appropriate by the executive director as a result of any allocation or reallocation of such loan to or among the authority's note or bond funds or any other funds of the authority. Any interest rate or rates established pursuant to this § 4 shall reflect the intent expressed in subdivision 3 of subsection A of § 36-55.33:1 of the Code of Virginia.

§ 5. Federally assisted loans.

When a housing development or dwelling unit financed by a loan under these rules and regulations or otherwise assisted by the authority is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government or where the authority assists in the administration of any federal program, the applicable federal law and rules and regulations shall be controlling over any inconsistent provision hereof.

§ 6. Administration of state and federal programs; acceptance of aid and guarantees.

A. The board by resolution may authorize the authority to operate and administer any program to provide loans or other housing assistance for persons and families of low and moderate income and, in furtherance thereof, to enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof, any municipality or any other persons or entities and to take such other action as shall be necessary or appropriate for the purpose of operating and administering, on behalf of or in cooperation with any of the foregoing, any such program.

B. The board by resolution may authorize the acceptance by the authority of gifts, grants, loans, contributions or other aid, including insurance and guarantees, from the federal government, the Commonwealth of Virginia or any agency thereof, or any other source in furtherance of the purposes of the Act, do any and all things necessary in order to avail itself of such aid, agree and comply with such conditions upon which such gifts, grants, loans, contributions, insurance, guarantees or other aid may be made, and authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate to implement any such gifts, grants, loans, contributions, insurance guarantees or other aid.

C. Without limitation on the provisions of subsection B of this section, the board by resolution may authorize the acceptance by the authority of any insurance or guarantee or commitment to insure or guarantee its bonds or notes and any grant with respect to such bonds or notes, whether insured, guaranteed or otherwise, and may authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate with respect thereto.

§ 7. Assistance of mortgage lenders.

The authority may, at its option, utilize the assistance and services of mortgage lenders in the processing, originating, disbursing and servicing of loans under these rules and regulations. The executive director is authorized to take such action and to execute such agreements and documents as he shall deem necessary or appropriate in order to procure, maintain and supervise such assistance and services. In the case of authority mortgage loans to be financed from the proceeds of obligations issued by the authority pursuant to § 36-55.37:1 of the Code of Virginia, the authority shall be required to utilize such assistance and services of mortgage lenders in the origination and servicing of such authority mortgage loans.

§ 8. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans from mortgage lenders. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds.

C. At or before the purchase of any mortgage loan pursuant to this section, the mortgage lender shall certify to the authority that the mortgage loan would in all respects be a prudent investment and that the proceeds of the purchase of the mortgage loan shall be invested as provided in subsection B of this section or invested in short-term obligations pending such investment.

D. The purchase price for any mortgage loan to be purchased by the authority pursuant to this section shall be established in accordance with subdivision (2) of § 36-55.35 of the Code of Virginia.

§ 9. Waiver.

The executive director may for good cause in any particular case waive or vary any of the provisions of these rules and regulations to the extent not inconsistent with the Act or with other applicable provisions of law.

§ 10. Amendment.

These rules and regulations may be amended and supplemented by the board at such times and in such manner as it may determine, to the extent not inconsistent with the Act or with other applicable provisions of law.

§ 11. Separability.

If any clause, sentence, paragraph, section or part of these rules and regulations shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

VA.R. Doc. No. R94-1011; Filed May 25, 1994, 11:26 a.m.

* * * * * * * *

Title of Regulation: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and ~~Families~~ *Households* of Low and Moderate Income.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: June 17, 1994.

Written comments may be submitted until June 17, 1994.

(See Calendar of Events section for additional information)

Basis: Section 36-55.30:3 of the Code of Virginia authorizes the authority to adopt, amend and repeal regulations to carry into effect the powers and purposes of the authority.

Purpose: The purpose of the proposed amendments is to make eligibility under the authority's single family loan program more consistent with federal regulations and customary lending practices and to increase availability of the authority's single family loan program to persons and households of low and moderate income.

Substance: The proposed amendments to the authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income will:

1. Provide that single family loans can be made to more than one person if all such persons to whom the loan is to be made are to live together in the dwelling as a single nonprofit housekeeping unit;

2. Delete the requirement that such persons be related by blood, marriage or adoption;

3. Delete or modify references to "family" or terms containing "family," as appropriate, to reflect the foregoing changes; and

4. Make conforming changes, minor clarifications and typographical corrections.

Issues: The proposed amendments will, by making the authority's lending policies as to eligibility consistent with those of FHA, VA, FmHA and private lending industry and with the policy of the Equal Credit Opportunity Act, simplify the administration of the authority's single family programs and will increase the number of persons of low and moderate income who will be eligible for loans under those programs. Because the authority has sufficient funds to provide loans to all expected applicants, the proposed amendments will not adversely affect any persons who would be eligible under the current regulations. The authority is not aware of any programmatic disadvantages for the public which would result from the adoption of the proposed amendment, although there may be objections to the proposed amendment on policy grounds.

Impact: The authority expects that the proposed amendments will result in the authority's financing of 60 additional single family loans annually for persons who would not otherwise be eligible therefor. The authority does not expect that any costs will be incurred for the implementation of and compliance with the proposed amendments. The authority is not aware of any localities that will be particularly affected by the proposed amendments.

Summary:

The proposed amendments to the authority's rules and regulations will (i) provide that single family loans can be made to more than one person if all such persons to whom the loan is to be made are to live together in the dwelling as a single nonprofit housekeeping unit; (ii) delete the requirement that such persons be related by blood, marriage or adoption; (iii) delete or modify references to "family" or terms containing "family," as appropriate, to reflect the foregoing changes; and (iv) make conforming changes, minor clarifications and typographical corrections.

VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Households of Low and Moderate Income.

PART I.
GENERAL.

§ 1.1. General.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to persons and ~~families~~ *households* of low and moderate income for the acquisition (and, where applicable, rehabilitation), ownership and occupancy of single family housing units.

In order to be considered eligible for a mortgage loan hereunder, a "person" or ~~"family"~~ *"household"* (as defined in the authority's rules and regulations) must have a "gross ~~family~~ income" (as determined in accordance with the authority's rules and regulations) which does not exceed the applicable income limitation set forth in Part II hereof. Furthermore, the sales price of any single family unit to be financed hereunder must not exceed the applicable sales price limit set forth in Part II hereof. The term "sales price," with respect to a mortgage loan for the combined acquisition and rehabilitation of a single family dwelling unit, shall include the cost of acquisition, plus the cost of rehabilitation and debt service for such period of rehabilitation, not to exceed three months, as the executive director shall determine that such dwelling unit will not be available for occupancy. In addition, each mortgage loan must satisfy all requirements of federal law applicable to loans financed with the proceeds of tax-exempt bonds as set forth in Part II hereof.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any mortgage loan hereunder to waive or modify any provisions of these rules and regulations where deemed appropriate by him for good cause, to the extent not inconsistent with the Act.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the mortgagor under the agreements and documents executed in connection with the mortgage loan.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the originating and administration of mortgage loans under the authority's single family housing program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

§ 1.2. Origination and servicing of mortgage loans.

A. Approval/definitions.

The originating of mortgage loans and the processing of

applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this § 1.2, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment an housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of this § 1.2, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have a net worth equal to or in excess of $250,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination and processing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); and

4. Such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into an originating and servicing agreement ("originating and servicing agreement") with the authority containing such terms and conditions as the executive director shall require with respect to the originating and servicing of mortgage loans hereunder.

For the purposes of these rules and regulations, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. Similarly, the term "originating agreement" shall hereinafter be deemed to include the term "originating and servicing agreement," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans. The term "servicing agreement" shall continue to mean only the agreement between the authority and a servicing agent.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. Allocation of funds.

The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;

2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds;

4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and

5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;

2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and

3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

C. Originating guide and servicing guide.

These rules and regulations constitute a portion of the originating guide of the authority. The processing guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of, these rules and regulations. The executive director is authorized to prepare and from time to time revise a processing guide and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the processing guide and the servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide (including the processing guide) and the servicing guide.

D. Making and purchase of new mortgage loans.

The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and these rules and regulations.

If the applicant and the application for a mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit, subject to the approval of ratification thereof by the board. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. Purchase of existing mortgage loans.

The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations

imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate and subject to the approval or ratification by the board. Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the Servicing Guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. Delegated underwriting and closing.

The executive director may, in his discretion, delegate to one or more originating agents all or some of the responsibility for underwriting, issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The issuance of such commitments shall be subject to ratification thereof by the board of the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority at such time as the authority may require. If the executive director determines that a mortgage loan does not comply with any requirement under the originating guide, the applicable originating agreement, the Act or these rules and regulations for which the originating agent was delegated responsibility, he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. Field originators.

The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;

3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and

4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under these rules and regulations as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of these rules and regulations requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. Servicing by the authority.

The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

PART II.
PROGRAM REQUIREMENTS.

§ 2.1. Eligible persons and ~~families~~ *households* .

A. Person.

A one-person household is eligible.

B. ~~Family~~ *Household* .

A single family loan can be made to more than one person only if all such persons to whom the loan is *to be* made ~~are related by blood, marriage or adoption and are living~~ *are to live* together in the dwelling as a single nonprofit housekeeping unit.

C. Citizenship.

Each applicant for an authority mortgage loan must either be a United States citizen or be a lawful permanent (not conditional) resident alien as determined by the U.S. Department of Immigration and Naturalization Service.

§ 2.2. Compliance with certain requirements of the Internal Revenue Code of 1986, as amended (hereinafter "the tax code").

The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for financing with the proceeds of tax-exempt bonds. In order to comply with these federal requirements and restrictions, the authority has established certain procedures which must be performed by the originating agent in order to determine such eligibility. The eligibility requirements for the borrower and the dwelling are described below as well as the procedures to be performed. The originating agent will perform these procedures and evaluate a borrower's eligibility prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth in other parts of this originating guide.

§ 2.2.1. Eligible borrowers.

A. General.

In order to be considered an eligible borrower for an authority mortgage loan, an applicant must, among other things, meet all of the following federal criteria:

The applicant:

1. May not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents. (See § 2.2.1 B Three-year requirement);

2. Must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days (90 days in the case of a rehabilitation loan as defined in § 2.17) after the date of the closing of the mortgage loan. (See § 2.2.1 C Principal residence requirement);

3. Must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing. (See § 2.2.1 D New mortgage requirement);

4. Must have contracted to purchase an eligible dwelling. (See § 2.2.2 Eligible dwellings);

5. Must execute an affidavit of borrower (Exhibit E) at the time of loan application;

6. Must not receive income in an amount in excess of the applicable federal income limit imposed by the tax code (See § 2.5 Income requirements);

7. Must agree not to sell, lease or otherwise transfer an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met. (See § 2.10 Loan assumptions); and

8. Must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.

B. Three-year requirement.

An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a "present ownership interest" (as hereinafter defined) in his principal residence. Each borrower must certify on the affidavit of borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see § 2.3 Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. Definition of present ownership interest. "Present ownership interest" includes:

a. A fee simple interest,

b. A joint tenancy, a tenancy in common, or a tenancy by the entirety,

c. The interest of a tenant shareholder in a cooperative,

d. A life estate,

e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time, and

f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

a. A remainder interest,

b. An ordinary lease with or without an option to purchase,

c. A mere expectancy to inherit an interest in a

principal residence,

d. The interest that a purchaser of a residence acquires on the execution of an accepted offer to purchase real estate, and

e. An interest in other than a principal residence during the previous three years.

2. Persons covered. This requirement applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. Prior tax returns. To verify that the eligible borrower meets the three-year requirement, the originating agent must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived.

The originating agent shall examine the tax returns particularly for any evidence that the eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. Review by originating agent. The originating agent must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) regarding the applicant's prior residency by reviewing any information including the credit report and the tax returns furnished by the eligible borrower for consistency, and make a determination that on the basis of its review each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

C. Principal residence requirement.

1. General. An eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of the eligible borrower within 60 days (90 days in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the authority. An eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan on the affidavit of borrower (to be updated by the verification and update of information form) and as part of the attachment to the deed of trust.

2. Definition of principal residence. A principal residence does not include any residence which can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner which would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where more than 15% of the total living area is to be used primarily in a trade or business.

3. Land not to be used to produce income. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to the eligible borrower. The eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

4. Lot size. Only such land as is reasonably necessary to maintain the basic liveability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, the lot may be as large as five acres, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, (iii) local city and county ordinances which require more acreage will be taken into consideration, or (iv) if the lot size is determined by the authority, based upon objective information provided by the borrower, to be usual and customary in the area for comparably priced homes.

5. Review by originating agent. The affidavit of borrower (Exhibit E) must be reviewed by the originating agent for consistency with the eligible

borrower's federal income tax returns and the credit report, and the originating agent must, based on such review, make a determination that the borrower has not used any previous residence or any portion thereof primarily in any trade or business.

6. Post-closing procedures. The originating agent shall establish procedures to (i) review correspondence, checks and other documents received from the borrower during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of the borrower are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating agent may establish different procedures to verify compliance with this requirement.

D. New mortgage requirement.

Mortgage loans may be made only to persons who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which the eligible borrower is liable or which was incurred on behalf of the eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.

1. Definition of mortgage. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner-financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.

2. Temporary financing. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage loan until it has determined that such construction has been satisfactorily completed.

3. Review by originating agent. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) the eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Based upon such review, the originating agent shall make a determination that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of the borrower and that the borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.

E. Multiple loans.

Any eligible borrower may not have more than one outstanding authority first mortgage loan.

§ 2.2.2. Eligible dwellings.

A. In general.

In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;

2. Be a one-family detached residence, a townhouse or one unit of an authority approved condominium; and

3. Satisfy the acquisition cost requirements set forth below.

B. Acquisition cost requirements.

1. General rule. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in § 2.3. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.

2. Acquisition cost requirements for assumptions. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see § 2.10 below).

3. Definition of acquisition cost. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.

a. Acquisition cost includes:

(1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the eligible borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items

of personal property.)

(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost.

(3) The cost of land on which the eligible dwelling is located and which has been owned by the eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.

b. Acquisition cost does not include:

(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by the eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.

(2) The imputed value of services performed by the eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.

4. Acquisition cost. The originating agent is required to obtain from each eligible borrower a completed affidavit of borrower which shall include a calculation of the acquisition cost of the eligible dwelling in accordance with this subsection B. The originating agent shall assist the eligible borrower in the correct calculation of such acquisition cost. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling.

5. Review by originating agent. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in § 2.4. If the acquisition cost exceeds such limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases - see § 2.10 below). Also, as part of its review, the originating agent must review the affidavit of borrower submitted by each mortgage loan applicant and must make a determination that the acquisition cost of the eligible dwelling has been calculated in accordance with this subsection B. In addition, the originating agent must compare the information contained in the affidavit of borrower with the information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.

6. Independent appraisal. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.

§ 2.2.3. Targeted areas.

A. In general.

In accordance with the tax code, the authority will make a portion of the proceeds of an issue of its bonds available for financing eligible dwellings located in targeted areas for at least one year following the issuance of a series of bonds. The authority will exercise due diligence in making mortgage loans in targeted areas by advising originating agents and certain localities of the availability of such funds in targeted areas and by advising potential eligible borrowers of the availability of such funds through advertising and/or news releases. The amount, if any, allocated to an originating agent exclusively for targeted areas will be specified in a forward commitment agreement between the originating agent and the authority.

B. Eligibility.

Mortgage loans for eligible dwellings located in targeted areas must comply in all respects with the requirements in this § 2.2 and elsewhere in this guide for all mortgage loans, except for the three-year requirement described in § 2.2.1 B. Notwithstanding this exception, the applicant must still submit certain federal income tax records. However, they will be used to verify income and to verify that previously owned residences have not been primarily used in a trade or business (and not to verify nonhomeownership), and only those records for the most recent year preceding execution of the mortgage documents (rather than the three most recent years) are required. See that section for the specific type of records to be submitted.

1. Definition of targeted areas.

a. A targeted area is an area which is a qualified census tract, as described in b below, or an area of

chronic economic distress, as described in c below.

b. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the state-wide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury.

c. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury under criteria specified in the tax code. PDS agents will be informed by the authority as to the location of areas so designated.

§ 2.3. Sales price limits.

The authority's maximum allowable sales price for loans for which reservations are taken by the authority before March 16, 1994, shall be as follows:

Area	New Construction	Existing and Substantial Rehab.
1. Washington DC-MD-VA MSA[1]		
''inner areas''	$131,790	$131,790
2. ''outer areas''	$124,875	$124,875
3. Norfolk-Va. Beach-Newport News MSA[2]	$ 81,500	$ 81,500
4. Richmond-Petersburg MSA[3]	$ 79,500	$ 79,500
5. Charlottesville MSA[4]	$ 95,450	$ 79,530
6. Clarke County	$ 90,250	$ 79,530
7. Culpeper County	$ 84,050	$ 79,530
8. Fauquier County	$101,670	$ 79,530
9. Frederick County and Winchester City	$ 92,150	$ 79,530
10. Isle of Wight County	$ 81,500	$ 79,530
11. King George County	$ 89,300	$ 79,530
12. Madison County	$ 76,000	$ 76,000
13. Orange County	$ 77,900	$ 77,900
14. Spotsylvania County and Fredericksburg City	$102,700	$ 79,530
15. Warren County	$ 83,600	$ 79,530
16. Balance of State[5]	$ 75,500	$ 75,500

[1] Washington DC-Maryland-Virginia MSA. Virginia Portion: "Inner Areas" - Alexandria City, Arlington County, Fairfax City, Fairfax County, Falls Church City; "Outer Areas" - Loudoun County, Manassas City, Manassas Park City, Prince William County, Stafford County.

[2] Norfolk-Virginia Beach-Newport News MSA. Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County.

[3] Richmond-Petersburg MSA. Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City.

[4] Charlottesville MSA. Albemarle County, Charlottesville City, Fluvanna County, Greene County.

[5] Balance of State. All areas not listed above.

The executive director may from time to time waive the foregoing maximum allowable sales prices with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the sales price of the residences to be financed by any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

The authority's maximum allowable sales price for loans for which reservations are taken by the authority on or after March 16, 1994, shall be 95% of the applicable maximum purchase prices (except that the maximum allowable sales price for targeted area residences shall be the same as are established for nontargeted residences) permitted or approved by the U.S. Department of the Treasury pursuant to the federal tax code. The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the dollar amounts of the foregoing maximum allowable sales prices for each area of the state. Any changes in the dollar amounts of such maximum allowable sales prices shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

§ 2.4. Net worth.

To be eligible for authority financing, an applicant cannot have a net worth exceeding 50% of the sales price of the eligible dwelling. (The value of life insurance policies, retirement plans, furniture and household goods shall not be included in determining net worth.) In addition, the portion of the applicant's liquid assets which are used to make the down payment and to pay closing costs, up to a maximum of 25% of the sale price, will not be included in the net worth calculation.

Any income producing assets needed as a source of income in order to meet the minimum income requirements for an authority loan will not be included in the applicant's net worth for the purpose of determining whether this net worth limitation has been violated.

§ 2.5. Income requirements.

A. Maximum gross ~~family~~ income.

As provided in § 2.2.1 A 6 the gross ~~family~~ income of an applicant for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this subsection A apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of § 2.2.1 A 6 are automatically met if an applicant's gross ~~family~~ income does not exceed the applicable limits set forth in this subsection.

For the purposes hereof, the term "gross ~~family~~ income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

1. For reservations made before March 16, 1994. For reservations made before March 16, 1994, the maximum gross ~~family~~ incomes for eligible borrowers shall be determined or set forth as follows:

The maximum gross ~~family~~ incomes set forth in this paragraph shall be applicable only to loans for which reservations are taken by the authority before March 16, 1994, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross ~~family~~ income ~~for each borrower~~ shall be a percentage (based on ~~family size~~ *the number of persons to occupy the dwelling upon financing of the mortgage loan*) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended) as follows:

~~Family Size~~ *Number of Persons to Occupy Dwelling*	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
1 person	70%
2 persons	85%
3 or more persons	100%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross ~~family~~ income limits expressed in dollar amounts for each area of the state, as established by the executive director, and ~~each family size~~ *the number of persons to occupy the dwelling* . Any changes in the dollar amounts of such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

The executive director may from time to time waive the foregoing income limits with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the income of the borrowers to receive any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

2. For reservations made on or after March 16, 1994. For reservations made on or after March 16, 1994, the maximum gross ~~family~~ incomes shall be determined or set forth as follows:

The maximum gross ~~family~~ incomes set forth in this subdivision 2 shall be applicable only to loans for which reservations are taken by the authority on or after March 16, 1994, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross ~~family~~ income ~~for each borrower~~ shall be a percentage (based on ~~family size~~ *the number of persons expected to occupy the dwelling upon financing of the mortgage loan*) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended) (the "median family income") as follows:

~~Family Size~~ *Number of Persons to Occupy Dwelling*	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	85%
3 or more persons	100%

The executive director may from time to time establish maximum gross ~~family~~ incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate on which the interest rate has been reduced due to financial support by the

authority:

~~Family~~ ~~Size~~ *Number of Persons to Occupy Dwelling*	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	65%
3 or more persons	80%

The executive director may from time to time establish maximum gross ~~family~~ incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate if he determines that such maximum gross family incomes will enable the authority to assist the state in achieving its economic and housing goals and policies:

~~Family~~ ~~Size~~ *Number of Persons to Occupy Dwelling*	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	95%
3 or more persons	110%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross ~~family~~ income limits under this subdivision 2 expressed in dollar amounts for each area of the state, as established by the executive director, and ~~each~~ ~~family~~ ~~size~~ *the number of persons to occupy the dwelling* . Any changes to the dollar amounts of such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

3. For loans guaranteed by FmHA.

With respect to a loan to be guaranteed by FmHA, the maximum ~~family~~ income ~~for each borrower~~ shall be the lesser of the maximum gross ~~family~~ income ~~a~~ determined in accordance with § 2.5 A 1 or 2 or FmHA income limits in effect at the time of the application.

B. Minimum income (not applicable to applicants for loans to be insured or guaranteed by the Federal Housing Administration, the Veterans Administration or FmHA (hereinafter referred to as "FHA, VA or FmHA loans")).

An applicant satisfies the authority's minimum income requirement for financing if the monthly principal and interest (at the rate determined by the authority), tax, insurance ("PITI") and other additional monthly fees such as condominium assessments (60% of the monthly condominium assessment shall be added to the PITI figure), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly debt payments with more than six months duration (and payments on debts lasting less than six months, if making such payments will adversely affect the applicant's ability to make mortgage loan payments during the months following loan closing) do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements. If either of the percentages set forth above are exceeded, compensating factors may be used by the authority, in its sole discretion, to approve the mortgage loan.

§ 2.6. Calculation of maximum loan amount.

Single family detached residence and townhouse (fee simple ownership) Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may otherwise be approved by the authority.

Condominiums - Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may be otherwise approved by the authority.

For the purpose of the above calculations, the value of personal property to be conveyed with the residence shall be deducted from the sales price. (See Exhibit R for examples of personal property.) The value of personal property included in the appraisal shall not be deducted from the appraised value.

In the case of an FHA, VA or FmHA loan, the FHA, VA or FmHA insurance fees or guarantee fees charged in connection with such loan (and, if an FHA loan, the FHA permitted closing costs as well) may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or FmHA requirements; provided, however, that in no event shall this revised maximum loan amount which includes such fees and closing costs be permitted to exceed the authority's maximum allowable sales price limits set forth herein.

§ 2.7. Mortgage insurance requirements.

Unless the loan is an FHA, VA or FmHA loan, the borrower is required to purchase at time of loan closing full private mortgage insurance (25% to 100% coverage, as the authority shall determine) on each loan the amount of which exceeds 80% of the lesser of sales price or

appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance. If the authority requires FHA, VA or FmHA insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or FmHA Guarantee has been obtained. In the event that the authority purchases an FHA or, VA or FmHA loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or FmHA loans), full private mortgage insurance as described above is required unless waived by the authority.

§ 2.8. Underwriting.

A. Conventional loans.

The following requirements must be met in order to satisfy the authority's underwriting requirements. However, additional or more stringent requirements may be imposed by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required.

1. Employment and income.

a. Length of employment. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Self-employed applicants. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See § 2.2.1 C Principal residence requirement.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. Income derived from sources other than primary employment.

(1) Alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant for a loan.

(2) Social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant for a loan.

(3) Part-time employment. Part-time employment must be continuous for a minimum of six months. Employment with different employers is acceptable so long as it has been uninterrupted for a minimum of six months. Part-time employment as used in this section means employment in addition to full-time employment.

Part-time employment as the primary employment will also be required to be continuous for six months.

(4) Overtime, commission and bonus. Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. Credit.

a. Credit experience. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references and history are considered to be important requirements in order to obtain an authority loan.

b. Bankruptcies. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years. If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy. The authority has complete discretion to decline a loan when a bankruptcy is involved.

c. Judgments and collections. An applicant is required to submit a written explanation for all judgments and collections. In most cases, judgments and collections must be paid before an applicant will be considered for an authority loan.

3. Appraisals. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

B. FHA loans only.

1. In general. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Mortgage insurance premium. Applicant's mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. Closing fees. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. Appraisals. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

C. VA loans only.

1. In general. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, most of the authority's basic eligibility requirements (including those described in §§ 2.1 through 2.5 hereof) remain in effect due to treasury restrictions or authority policy.

2. VA funding fee. The funding fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

3. Appraisals. VA certificates of reasonable value (CRV's) are acceptable.

D. FmHA loans only.

1. In general. The authority will normally accept FmHA underwriting requirements and property standards for FmHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Guarantee fee. The FmHA guarantee fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

E. FHA and VA buydown program.

With respect to FHA and VA loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see § 2.14 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain FHA requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on FHA guidelines then in effect (see also subsection B or C above, as applicable).

F. Interest rate buydown program.

Unlike the program described in subsection E above which permits a direct buydown of the borrower's monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

§ 2.9. Funds necessary to close.

A. Cash (Not applicable to FHA, VA or FmHA loans).

Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit the applicant to borrow funds for this purpose, except where (i) the loan amount is less than or equal to 80% of the lesser of the sales price or the appraised value, or (ii) the loan amount exceeds 80% of the lesser of the sales price or the appraised value and the applicant borrows a portion of the funds under a loan program approved by the authority or from their employer, with the approval of the private mortgage insurer, and the applicant pays in cash from their own funds an amount equal to at least 3.0% of the lesser of the sales price or the appraised value. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

B. Gift letters.

A gift letter is required when an applicant proposes to obtain funds as a gift from a third party. The gift letter must confirm that there is no obligation on the part of the borrower to repay the funds at any time. The party making the gift must submit proof that the funds are available. This proof should be in the form of a verification of deposit.

C. Housing expenses.

Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed carefully to determine if there is a substantial increase. If there is a substantial increase, the applicant must demonstrate his ability to pay the additional expenses.

§ 2.10. Loan assumptions.

A. Requirements for assumptions.

VHDA currently permits assumptions of all of its single family mortgage loans provided that certain requirements are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross ~~family~~ income for ~~those~~ *the person or household* assuming a loan shall be 100% of the applicable median family income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the maximum gross family income shall be 115% of the applicable median family income (140% for a residence in a targeted area) and if assumed by *a person or* a household of less than three persons, the maximum gross family income shall be 100% of the applicable median family income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross ~~family~~ income for ~~those~~ *the person or household* assuming loans shall be the highest percentage, as then in effect under § 2.5 A 2, of applicable median family income for ~~the size of the family assuming the loan~~ *the number or persons to occupy the dwelling upon assumption of the mortgage loan* , unless otherwise provided in the deed of trust. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:

1. Assumptions of conventional loans.

a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross ~~family~~ income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirement)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.2.1 B (Three-year requirement)

(5) § 2.2.2 B (Acquisition cost requirements)

(6) § 2.7 (Mortgage insurance requirements).

b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross ~~family~~ income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirements)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.7 (Mortgage insurance requirements).

2. Assumptions of FHA, VA or FmHA loans.

a. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions must be met:

(1) Maximum gross ~~family~~ income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirement)

(3) § 2.2.1 B (Three-year requirement)

(4) § 2.2.2 B (Acquisition cost requirements).

In addition, all applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

b. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

B. Review by the authority/additional requirements.

Upon receipt from an originating agent or servicing agent of an application package for an assumption, the authority will determine whether or not the applicable requirements referenced above for assumption of the loan have been met and will advise the originating agent or servicing agent of such determination in writing. The authority will further advise the originating agent or servicing agent of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty including, if applicable, pool insurance, submission of an escrow transfer letter and execution of a Recapture Requirement Notice (VHDA Doc. R-1).

§ 2.11. Leasing, loan term, and owner occupancy.

A. Leasing.

The owner may not lease the property without first contacting the authority.

B. Loan term.

Loan terms may not exceed 30 years.

C. Owner occupancy.

No loan will be made unless the residence is to be occupied by the owner as the owner's principal residence.

§ 2.12. Reservations/fees.

A. Making a reservation.

The authority currently reserves funds for each mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked-in interest rates are also nontransferable. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline. Locked-in interest rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances.

B. More than one reservation.

An applicant, including an applicant for a loan to be guaranteed by VA, may request a second reservation if the first has expired or has been cancelled. If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation.

C. The reservation fee.

The originating agent or field originator shall collect and remit to the authority a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. A second reservation fee must be collected for a second reservation. No substitutions of applicants or properties are permitted.

D. Other fees.

1. Origination fee. In connection with the origination and closing of the loan, the originating agent shall collect an amount equal to 1.0% of the loan amount (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only). If the loan does not close and the failure to close is not due to the fault of the applicant, then the origination fee shall be waived.

2. Discount point. The originating agent shall collect from the seller at the time of closing an amount equal to 1.0% of the loan amount.

§ 2.13. Commitment. (Exhibit J)

A. In general.

Upon approval of the applicant, the authority will send a mortgage loan commitment to the borrower in care of the originating agent. (For FmHA loans, upon approval of the applicant, the authority will submit the credit package to FmHA and upon receipt of the FmHA conditional commitment, will send the mortgage loan commitment.) Also enclosed in the commitment package will be other documents necessary for closing. The originating agent shall ask the borrower to indicate his acceptance of the mortgage loan commitment by signing and returning it to the originating agent within 15 days after the date of the commitment.

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant and approved by the authority. If an additional commitment is issued to an applicant, the interest rate may be higher than the rate offered in the original commitment. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

§ 2.14. Buy-down points.

Special note regarding checks for buy-down points (this applies to both the monthly payment buydown program described in § 2.8 D above and the interest rate buydown program described in § 2.8 E). A certified or cashier's check made payable to the authority is to be provided at loan closing for buy-down points, if any. Under the tax code, the original proceeds of a bond issue may not exceed the amount necessary for the "governmental purpose" thereof by more than 5.0%. If buy-down points are paid out of mortgage loan proceeds (which are financed by bonds), then this federal regulation is violated because bond proceeds have in effect been used to pay debt service rather than for the proper "governmental purpose" of making mortgage loans. Therefore, it is required that buy-down fees be paid from the seller's own funds and not be deducted from loan proceeds. Because of this requirement, buy-down funds may not appear as a deduction from the seller's proceeds on the HUD-1 Settlement Statement.

§ 2.15. Property guidelines.

A. In general.

For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination shall in turn be based solely upon a real estate appraisal's determination of the value and condition of the property.

In addition, manufactured housing (mobile homes), both new construction and certain existing, may be financed only if the loan is insured 100% by FHA (see subsection C).

B. Conventional loans.

1. Existing housing and new construction. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state maintained road; provided, however, that the authority may, on a case-by-case basis, approve financing of property located on a private road acceptable to the authority if the right to use such private road is granted to the owner of the residence pursuant to a recorded right-of-way agreement providing for the use of such private road and a recorded maintenance agreement provides for the maintenance of such private road on terms and conditions acceptable to the authority (any other easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements which will adversely affect the marketability of the property, such as high-tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and sewer hookups may have their own well and septic system; provided that joint ownership of a well and septic system will be considered on a case-by-case basis to determine whether such ownership is acceptable to the authority.

2. Additional requirements for new construction. New construction financed by a conventional loan must also meet Uniform Statewide Building Code and local code.

C. FHA, VA or FmHA loans.

1. Existing housing and new construction. Both new construction and existing housing financed by an FHA, VA or FmHA loan must meet all applicable requirements imposed by FHA, VA or FmHA.

2. Additional requirements for new construction. If such homes being financed by FHA loans are new manufactured housing they must meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter masonry curtain wall conforming to standards of the Uniform Statewide Building Code, be permanently affixed to the site owned by the borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.

§ 2.16. Substantially rehabilitated.

For the purpose of qualifying as substantially rehabilitated housing under the authority's maximum sales price limitations, the housing unit must meet the following definitions:

1. Substantially rehabilitated means improved to a condition which meets the authority's underwriting/property standard requirements from a condition requiring more than routine or minor repairs or improvements to meet such requirements. The term includes repairs or improvements varying in degree from gutting and extensive reconstruction to cosmetic improvements which are coupled with the cure of a substantial accumulation of deferred maintenance, but does not mean cosmetic improvements alone.

2. For these purposes a substantially rehabilitated housing unit means a dwelling unit which has been substantially rehabilitated and which is being offered for sale and occupancy for the first time since such rehabilitation. The value of the rehabilitation must equal at least 25% of the total value of the rehabilitated housing unit.

3. The authority's staff will inspect each house submitted as substantially rehabilitated to ensure compliance with our underwriting-property standards. An appraisal is to be submitted after the authority's inspection and is to list the improvements and estimate their value.

4. The authority will only approve rehabilitation loans to eligible borrowers who will be the first resident of the residence after the completion of the rehabilitation. As a result of the tax code, the proceeds of the mortgage loan cannot be used to refinance an existing mortgage, as explained in § 2.2 1 D (New mortgage requirement). The authority will approve loans to cover the purchase of a residence, including the rehabilitation:

a. Where the eligible borrower is acquiring a residence from a builder or other seller who has performed a substantial rehabilitation of the residence; and

b. Where the eligible borrower is acquiring an unrehabilitated residence from the seller and the eligible borrower contracts with others to perform a substantial rehabilitation or performs the rehabilitation work himself prior to occupancy.

§ 2.17. Condominium requirements.

A. Conventional loans.

The originating agent must provide evidence that the condominium is approved by any two of the following: FNMA, FHLMC or VA. The originating agent must submit evidence at the time the borrower's application is submitted to the authority for approval.

B. FHA, VA or FmHA loans.

The authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan or by FmHA, in the case of an FmHA loan.

§ 2.18. FHA plus program.

A. In general.

Notwithstanding anything to the contrary herein, the authority may make loans secured by second deed of trust liens ("second loans") to provide downpayment and closing cost assistance to eligible borrowers who are obtaining FHA loans secured by first deed of trust liens. Second loans shall not be available to a borrower if the FHA loan is being made under the FHA buydown program or is subject to a step adjustment in the interest rate thereon or is subject to a reduced interest rate due to the financial support of the authority.

B. Mortgage insurance requirements.

The second loans shall not be insured by mortgage insurance; accordingly, the requirements of § 2.7 regarding mortgage insurance shall not be applicable to the second loan.

C. Maximum loan amount.

The requirements of § 2.6 regarding calculation of maximum loan amount shall not be applicable to the second loan. In order to be eligible for a second loan, the borrower must obtain an FHA loan for the maximum loan amount permitted by FHA. The second loan shall be for the lesser of:

1. The lesser of sales price or appraised value plus FHA allowable closing fees (i.e., fees which FHA permits to be included in the FHA acquisition cost and to be financed) minus the FHA maximum base loan amount, seller paid closing costs and 1.0% of the sales price, or

2. 3.0% of the lesser of the sales price or appraised value plus $1,100.

In no event shall the combined FHA loan and the second loan amount exceed the authority's maximum allowable sales price.

D. Underwriting.

With respect to underwriting, no additional requirements or criteria other than those applicable to the FHA loan shall be imposed on the second loan.

E. Assumptions.

The second mortgage loan shall be assumable on the same terms and conditions as the FHA loan.

F. Fees.

No origination fee or discount point shall be collected on the second loan.

G. Commitment.

Upon approval of the applicant, the authority will issue a mortgage loan commitment pursuant to § 2.13. The mortgage loan commitment will include the terms and conditions of the FHA loan and the second loan and an addendum setting forth additional terms and conditions applicable to the second loan. Also enclosed in the commitment package will be other documents necessary to close the second loan.

NOTE: Documents and forms referred to herein as Exhibits have not been adopted by the authority as a part of the rules and regulations for single family mortgage loans to persons and ~~families~~ *households* of low and moderate income but are attached thereto for reference and informational purposes. Accordingly, such documents and forms have not been included in the foregoing rules and regulations for single family mortgage loans to persons and ~~families~~ *households* of low and moderate income. Copies of such documents and forms are available upon request at the offices of the authority.

VA.R. Doc. No. R94-1012; Filed May 25, 1994, 11:28 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulations: **State Plan for Medical Assistance Relating to Physical Therapy and Related Services.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.
VR 460-02-4.1920. Methods and Standards Used to Establish Payment Rates–Other Types of Care.
VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

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

Public Hearing Date: N/A – Written comments may be submitted through August 12, 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 (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:7.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

The Code of Federal Regulations, Title 42, Part 456, Subpart B provides for DMAS' authority to authorize services and conduct utilization review. Section 440.110 of the Code of Federal Regulations permits the coverage of physical therapy and related services. Section 440.60 of the Code of Federal Regulations provides for the coverage of services rendered by other types of licensed practitioners, in this case, licensed psychologists and clinical social workers.

Purpose: The purpose of this proposal is to amend the State Plan for Medical Assistance and VR 460-04-3.1300 concerning the authorization and utilization review of physical therapy and related services, and to provide guidelines for the provision of psychological and psychiatric services in schools.

Summary and Analysis: The sections of the state plan affected by this action are the Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A & B); Standards Established and Methods Used to Assure High Quality Care (Attachment 3.1 C); and Methods and Standards for Establishing Payment Rates–Other Types of Care (Attachment 4.19 B). The state-only regulations affected by this regulatory action are VR 460-04-3.1300.

DMAS has provided reimbursement for physical therapy and related services since 1978 under two major programs: general physical rehabilitative and intensive rehabilitative services. This regulation will allow DMAS to categorize general physical outpatient rehabilitation (physical therapy, occupational therapy, and speech-language pathology services) into two subgroups. The first is outpatient rehabilitative services for acute conditions. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward established goals is likely to occur frequently. The plan of care must be reviewed and updated at least every 60 days by the therapist, and a personally signed and dated physician certification for continued need for service is required at least every 60 days. The physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at minimum, be initialed and dated at the time of the initialing.

The second subgroup is outpatient rehabilitative services for long-term, nonacute conditions. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur infrequently. The plan of care must be reviewed, updated, and signed by the physician and therapist at least annually. A personally signed and dated physician certification is also required at least annually. The physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at minimum, be initialed and dated at the time of the initialing.

Physician orders are required and must be in place before any services are initiated. Guidelines are provided when physical therapy and related conditions are to be considered for termination regardless of the already preauthorized number of visits or services.

Guidelines are also provided for psychological and psychiatric services, and school divisions are added as an entity which can provide these services. Specifically, such services are medically prescribed treatment required to sustain behavioral or emotional gains or to improve or restore cognitive functional levels which have been impaired. Services are designed to improve the individual's ability to function at an improved or independent level. It should be noted that these are not new services, but rather a new provider type which can offer the services. Recipients can currently receive psychological and psychiatric services when provided by an independent practitioner.

In addition, revisions are made to the intensive rehabilitation regulations by moving detailed language for these services from the state plan to state-only regulations. Specifically, the changes conform the terminology to more acceptable language that is currently used by rehabilitation providers (e.g., "interdisciplinary team" rather than "multi-disciplinary team"). Clarification regarding criteria for continued participation in intensive rehabilitation services is provided. These changes have no fiscal impact. Eligibility for durable medical equipment (DME) services under intensive rehabilitation has been removed at the direction of the Health Care Financing Administration (HCFA). The majority of intensive rehabilitation recipients meet the criteria for DME services under the home health program. HCFA's only requirement for DME services is found under the federal requirements for services provided under the home health program.

Finally, language is added to the reimbursement (fee-for-service) methodology section of the plan to describe payment for physical therapy and related services that may be provided by schools and home health agencies. This is not new policy. Language was added on the recommendation of the Health Care Financing Administration because this area had not been adequately described in the plan previously.

Issues: There are no disadvantages to the public for these regulations. The advantages to the public are that Medicaid eligible children will receive therapy services in their schools.

Impact: The agency anticipates no additional fiscal expenditures for the categorizing of outpatient rehabilitative services into the two subgroups. The change involves the frequency in which outpatient rehabilitation

providers review and update the plan of care and does not involve any reimbursement changes.

Adequate funding is included in the current FY94 budget to cover the provision of psychological and psychiatric services in schools. It is anticipated that $466,000 ($5,000 general fund and $461,000 nongeneral fund) will be required to implement this action in FY95 and the same amount in FY96; however, this amount includes nursing services, annual interdisciplinary plan of care, and medical evaluation services in addition to psychological and psychiatric services. There is a limited general fund requirement since schools provide a match. The Department of Education estimates that 20 to 40 school districts will participate in the provision of services through Medicaid.

Summary:

The amendments to these regulations permit psychologists employed by school divisions to render services to Medicaid eligible children and be reimbursed by Medicaid.

VR 460-03-3.1100. Amount, Duration and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive

eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

1. Are furnished to outpatients;

2. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

3. Are furnished by an institution that:

a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

C. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

A. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

B. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

C. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

D. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in the Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the state plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

4c. Family planning services and supplies for individuals of child-bearing age.

A. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

B. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written treatment plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist.

Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

1. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

2. Exhibits deficits in social skills, peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

3. Is at risk for developing or requires treatment for maladaptive coping strategies; and

4. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

Psychological or psychiatric services may be provided in an office, a mental health clinic, or by a local school division.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. ~~Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.~~ *Reserved.*

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services.

Diagnostic examination and optometric treatment procedures and services by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services *; psychological services .*

1. ~~Clinical psychologists' services.~~ *Psychotherapy. Limits and requirements for covered services are found under Psychiatric Services (§ 5 D).*

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are

limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing ~~and~~ ~~psychotherapy~~ by clinical psychologists licensed by the State Board of Medicine ~~and~~ , *by* psychologists clinical licensed by the Board of Psychology , *and by a licensed clinical social worker under the direct supervision of a psychologist or psychiatrist* are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs).

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

4. For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachments 3.1 A and B.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements. *Services shall be provided according to guidelines found in the Virginia Medicaid Rehabilitation Manual.*

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing ~~homes'~~ *facilities'* operating cost.

~~C. Physical therapy services meeting all of the following conditions shall be furnished to patients:~~

~~1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;~~

~~2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.~~

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

~~C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:~~

~~1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.~~

~~2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.~~

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist ; ~~see Page 1, General and Page 12, Physical Therapy and Related Services .~~)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

~~C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:~~

~~1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);~~

~~2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and~~

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

11d. Authorization for *outpatient rehabilitation* services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, school divisions, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. Documentation for medical justification must include physician orders or a plan of care 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.

C. Covered outpatient rehabilitative services for acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward established goals is likely to occur frequently.

D. Covered outpatient rehabilitation services for long-term, nonacute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur slowly.

E. Payment shall not be made for reimbursement requests submitted more than 12 months after the termination of services.

~~11e. Documentation requirements.~~

~~A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:~~

~~1. Describe the clinical signs and symptoms of the patient's condition;~~

~~2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;~~

~~3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;~~

~~4. Include a copy of the physician's orders and plan of care;~~

~~5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);~~

~~6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;~~

~~7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and~~

~~8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each~~

~~school year and the time frames necessary to meet these goals.~~

~~B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.~~

~~11f.~~ *11e.* Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. 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. Physician orders must be personally signed and dated prior to the initiation of rehabilitative services. The certifying physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at minimum, be initialed and dated at the time of the initialing.

~~B.~~ *C.* Services shall be furnished under a written plan of treatment and must be established *, signed and dated (as specified in subsection B of this section),* 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.~~ *D.* A physician recertification shall be required periodically *, and* must be signed and dated *(as specified in subsection B)* 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. *Certification and recertification must be signed and dated (as specified in subsection B) prior to the beginning of rehabilitation services.*

~~D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.~~

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be ~~terminated~~ *considered for termination* regardless of the ~~approved length of stay~~ *preauthorized visits or services* when ~~further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.~~ *any of the following conditions are met:*

1. No further potential for improvement is demonstrated.

2. There is limited motivation on the part of the individual or caregiver.

3. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

4. Progress toward an established goal(s) cannot be achieved within a reasonable period of time.

5. The established goal serves no purpose to increase meaningful functional or cognitive capabilities.

6. The service can be provided by someone other than a skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

B. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

C. Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

E. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

F. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

b. In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

c. In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

4. Prior authorization of prescription drug products, coverage.

a. The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

b. Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

c. In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

d. The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12

months, unless new or previously unavailable relevant and objective information is presented.

e. Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

5. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

6. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, ~~speech therapy~~ *speech-language pathology* , cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of *physical medicine* rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

6. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This shall be evidenced by regular attendance in planned activities and demonstrated progress toward the established

goals.

7. Intensive rehabilitation services shall be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

a. No further potential for improvement is demonstrated.

b. There is limited motivation on the part of the individual or caregiver.

c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.

e. The established goal serves no purpose to increase meaningful functional or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

B. Community mental health services.

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

"Code" means the Code of Virginia.

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

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment

and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

(1) Self-care and hygiene skills;

(2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half

of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home

used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens.

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

The following is a description of the standards and the methods that will be used to assure that the medical and remedial care and services are of high quality:

§ 1. Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

§ 2. Utilization control.

A. General acute care hospitals.

1. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the state plan:

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the state plan that the individual requires inpatient hospital or mental hospital care.

b. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. Long-stay acute care hospitals (nonmental hospitals).

1. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

c. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. In addition, the individual must meet at least one of the following requirements:

(1) Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week,

for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) The individual must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(c) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

e. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

2. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.) and with terminal illnesses.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

c. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. In addition, the child must meet one of the following requirements:

(1) Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc; or

(3) Must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) Ostomy care requiring services by a licensed nurse;

(g) Services required for terminal care.

e. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

C. Nursing facilities.

1. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall 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 (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);

(2) Skilled nursing services by a registered nurse available 24 hours a day;

(3) Coordinated multidisciplinary team approach to meet the needs of the resident;

(4) For residents under age 21, provision for the educational and habilitative needs of the child;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, 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 two hours per day, five days a week;

(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning;

(15) Family or caregiver training; and

(16) Infection control.

D. Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ICF/MR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each ~~intermediate care FMR~~ *ICF/MR* or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the state plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

E. 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,

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 *rehabilitation* or *comprehensive* outpatient *physical* rehabilitation *as provided in a comprehensive outpatient rehabilitation facility (CORF)* if *the following criteria are met* :

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of ~~a multi-disciplinary~~ *an interdisciplinary* coordinated team approach to improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the ~~initial~~ disability requirement, participants shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy

2. Physical Therapy

3. Cognitive Rehabilitation

4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

C. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This is evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

D. Intensive rehabilitation services are to be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

1. No further potential for improvement is demonstrated.

2. There is limited motivation on the part of the individual or caregiver.

3. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

4. Progress toward an established goal or goals cannot be achieved within a reasonable length of time.

5. The established goal serves no purpose to increase meaningful function or cognitive capabilities.

6. The service can be provided by someone other than a skilled rehabilitation professional.

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~~ *an interdisciplinary* 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 *interdisciplinary* plan *of care* 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. *All intensive rehabilitation services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.*

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. *Interdisciplinary* 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~~ *determine if rehabilitation criteria continue to be met, and revise patient goals as needed* . A review by the various team members of each others' notes does not constitute a team conference. *Where practical, the patient or family shall participate in the team conferences.* 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~~ *considered for termination* , 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 *and that the patient continues to meet intensive rehabilitation criteria throughout the entire program* . 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 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~~ *interdisciplinary* patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory,

discrimination and behavior; and

6. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. Psychology.

Psychology services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social work.

Social work services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational therapy.

Recreational therapy are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. Prosthetic/orthotic services.

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine

oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

J. Durable medical equipment.

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;

c. Furniture or appliance not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience, for example, an electric wheelchair plus a manual chair; cleansing wipes);

e. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and non-legend drugs);

f. Home or vehicle modifications;

g. Items not suitable for or used primarily in the home setting (i.e., but not limited to, car seats, equipment to be used while at school);

h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

PART IX.
HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the

patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Nursing care. Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Medical social services. Medical social services must be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

5. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

6. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

7. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

8. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

9. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

PART X.
COMMUNITY MENTAL HEALTH SERVICES.

§ 10.1. Utilization review general requirements.

A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;

2. The admission to service and level of care was appropriate;

3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3.1 A and B, Supplement 1 § 13d Rehabilitative Services; and

4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. Mental health services utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found ~~at~~ *in* VR 460-03-3.1100.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

5. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

9. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's

emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. The program shall operate a minimum of two 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.

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~~ *in* 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 , *in school divisions, by home health agencies,* 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.

C. Utilization review shall include determinations that providers meet all the requirements of Virginia state regulations found in VR 460-04-3.1300. Utilization review shall be performed to ensure that services are appropriately provided and that services provided to Medicaid recipients are medically necessary and appropriate.

§ 11.2. Covered outpatient rehabilitative services.

A. Covered outpatient rehabilitative services *for acute conditions* 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. *Such services may be provided by outpatient settings of hospitals, rehabilitation agencies, and home health agencies.*

B. Covered outpatient rehabilitative services for long-term, chronic conditions 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. Such services may be provided by outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, and school divisions.

§ 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. *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.*

~~A. Physical therapy services meeting all of the following conditions shall be furnished to patients:~~

~~1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.~~

~~2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.~~

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

~~B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:~~

~~1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.~~

~~2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.~~

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

~~C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:~~

~~1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-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. Physical therapy, occupational therapy, and~~

speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, home health service agencies, or school divisions shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized . Documentation for medical justification must include physician orders or a plan of care signed by the physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting, home health agency, school division, or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

PART XII.
UTILIZATION REVIEW OF CASE MANAGEMENT FOR RECIPIENTS OF AUXILIARY GRANTS.

§ 12.1. Criteria of need for case management services.

It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an adult care residence to assess the need for case management services. The case manager shall, at a minimum, update the assessment and make any necessary referrals for service as part of the case management annual visit. Case management services may be initiated at any time during the year that a need is identified.

§ 12.2. Coverage limits.

DMAS shall reimburse for one case management visit per year for every individual who receives an auxiliary grant. For individuals meeting the following ongoing case management criteria, DMAS shall reimburse for one case

management visit per calendar quarter:

1. The individual needs the coordination of multiple services and the individual does not currently have support available that is willing to assist in the coordination of and access to services, and a referral to a formal or informal support system will not meet the individual's needs; or

2. The individual has an identified need in his physical environment, support system, financial resources, emotional or physical health which must be addressed to ensure the individual's health and welfare and other formal or informal supports have either been unsuccessful in their efforts or are unavailable to assist the individual in resolving the need.

§ 12.3. Documentation requirements.

A. The update to the assessment shall be required annually regardless of whether the individual is authorized for ongoing case management.

B. A care plan and documentation of contacts must be maintained by the case manager for persons authorized for ongoing case management.

1. The care plan must be a standardized written description of the needs which cannot be met by the adult care residence and the resident-specific goals, objectives and time frames for completion. This care plan must be updated annually at the time of reassessment, including signature by both the resident and case manager.

2. The case manager shall provide ongoing monitoring and arrangement of services according to the care plan and must maintain documentation recording all contacts made with or on behalf of the resident.

VR 460-02-4.1920. Methods and Standards Used for Establishing Payment Rates–Other Types of Care.

§ 1. General.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

1. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the plan at least to the extent these are available to the general population.

2. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

3. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

§ 2. Services which are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

2. Outpatient hospital services excluding laboratory

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency room and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

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

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse for nonemergency care rendered in emergency rooms at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above. Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.

4. Rehabilitation agencies

5. Comprehensive outpatient rehabilitation facilities

6. Rehabilitation hospital outpatient services.

§ 3. Fee-for-service providers.

A. Payment for the following services shall be the lower of the state agency fee schedule or actual charge (charge to the general public):

1. Physicians' services (Supplement 1 has obstetric/pediatric fees.) The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

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

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse physicians for nonemergency care rendered in emergency rooms at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above. Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services

3. Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

4. Podiatry

5. Nurse-midwife services

6. Durable medical equipment

7. Local health services

8. Laboratory services (Other than inpatient hospital)

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

10. X-Ray services

11. Optometry services

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as

set forth by Supplement 3.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

B. Hospice services payments must be no lower than the amounts using the same methodology used under part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

C. Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items 6 and 7 below:

1. The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF.

3. The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percent discount established by the methodology set out in a through c below. (Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made which reduce such limits or fees for covered outpatient drugs).

a. Percent discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

4. A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives.

5. The provider's usual and customary charge to the public, as identified by the claim charge.

6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. However, oral contraceptives shall not be subject to the one month dispensing rule. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.

7. The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

8. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of $4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of October 1, 1990, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be $4.40.

D. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

E. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

F. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency

Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

G. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan. See Supplement 2 of this methodology.

H. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

I. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

J. Targeted case management for high-risk pregnant women and infants up to age two and for community mental health and mental retardation services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

§ 4. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

A. All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

B. Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

C. Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

D. All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past 12 months shall be declared inactive.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

§ 5. Refund of overpayments.

A. Providers reimbursed on the basis of a fee plus cost of materials.

1. When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

2. If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

3. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

4. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

5. If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

6. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

7. In the request for an extended repayment schedule,

the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

8. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

9. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

10. The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

B. Providers reimbursed on the basis of reasonable costs.

1. When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputed in whole or in part DMAS's determination of the overpayment.

2. If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, an underpayment discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

3. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

4. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment, or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

5. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

6. If during the time an extended repayment schedule is in effect, the provider withdraws from the program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

7. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

8. In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

9. One an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

10. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

11. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of

overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

§ 6. EPSDT.

A. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, reimbursement shall be provided for services resulting from early and periodic screening, diagnostic, and treatment services. Reimbursement shall be provided for such other measures described in Social Security Act § 1905(a) required to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

B. Payments to fee-for-service providers shall be in accordance with § 3 of Attachment 4.19B the lower of (i) state agency fee schedule or (ii) actual charge (charge to the general public).

C. Payments to outpatient cost-based providers shall be in accordance with § 2 in 4.19B.

D. Psychiatric services delivered in a psychiatric hospital for individuals under age 21 shall be reimbursed at a uniform all-inclusive per diem fee and shall apply to all service providers. The fee shall be all-inclusive to include physician and pharmacy services. The methodology to be used to determine the per diem fee shall be as follows. The base period uniform per diem fee for psychiatric services resulting from an EPSDT screening shall be the median (weighted by children's admissions in state-operated psychiatric hospitals) variable per day cost of state-operated psychiatric hospitals in the fiscal year ending June 30, 1990. The base period per diem fee shall be updated each year using the hospital market basket factor utilized in the reimbursement of acute care hospitals in the Commonwealth.

§ 7. Dispute resolution for state-operated providers.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review.

A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after the receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other Cabinet Secretary as appropriate. Any determination by such Secretary or Secretaries shall be final.

VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

PART I.
SCOPE.

§ ~~1.~~ *§ 1.1.* Scope

A. ~~Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services.~~ *Medicaid covers outpatient physical rehabilitative services provided in outpatient settings. Services may be provided by acute and rehabilitation hospitals, by school divisions, by home health agencies, and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services.*

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care *that is personally signed and dated by the physician prior to the initiation of rehabilitation services. The physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at a minimum, be initialed and dated at the time of the initialing .*

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be required to meet State and Federal licensing or certification requirements.

E. Covered outpatient rehabilitative services for short-term, acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward established goals is likely to occur frequently.

F. Covered outpatient rehabilitative services for long-term, nonacute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur slowly.

G. All 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.

H. Rehabilitative services may be provided when all the following conditions are evidenced:

1. There is potential for improvement in the patient's condition;

2. There is motivation on the part of the patient and caregiver;

3. The patient's medical condition is stable; and

4. Progress toward goal achievement is expected within a reasonable time frame consistent with expectations for acute conditions and nonacute conditions.

I. Continued rehabilitation services may be provided when there is documentation of a positive history of response to previous therapy or evidence that a change in patient potential for improvement has occurred, or that a new or different therapeutic approach may effect a positive outcome.

J. Rehabilitative services shall be provided according to guidelines found in the Virginia Medicaid Rehabilitation Manual and in the Virginia Medicaid School Division Manual.

PART II.
ELIGIBILITY CRITERIA FOR OUTPATIENT REHABILITATIVE SERVICES.

§ 2.1. Eligibility criteria for outpatient rehabilitative services.

To be eligible for outpatient rehabilitative services for an acute or long-term, nonacute condition, the patient must require at least one of the following services: physical therapy, occupational therapy, and speech-language pathology services.

PART III.
CRITERIA FOR THE PROVISION OF OUTPATIENT REHABILITATIVE SERVICES.

§ ~~2.~~ *§ 3.1.* Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital ~~inpatient or~~ outpatient service, nursing facility service, home health service, *rehabilitation agency service; by a school division employing qualified physical therapists;* or when otherwise included as an authorized service by a cost provider who provides rehabilitation services ~~; or by a school district employing qualified physical therapists~~ .

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Physical therapy services meeting all ~~of~~ the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed *and personally signed and dated (as in § 1.1 B)* by a physician after any needed consultation with a

physical therapist licensed by the Board of Medicine ~~.~~ *; and*

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This *supervisory* visit shall not be reimbursable.

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

§ ~~3.~~ *§ 3.2.* Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital ~~inpatient or~~ outpatient service, nursing facility service, home health service, *rehabilitation agency; by a school division employing qualified occupational therapists;* or when otherwise included as an authorized service by a cost provider who provides rehabilitation services ~~; or a school district employing qualified therapists~~ .

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all ~~of~~ the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed *and personally signed and dated (as in § 1.1 B)* by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board; *and*

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association under the supervision of an occupational therapist as defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This *supervisory* visit shall not be reimbursable.

~~3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.~~

§ ~~4.~~ *§ 3.3.* Services for individuals with speech, hearing, and language disorders.

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital ~~inpatient or~~ outpatient service, nursing facility service, home health service, *rehabilitation agency; by a school division employing a qualified speech-language pathologist or audiologist;* or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed *and signature-dated* 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); *and*

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 ~~; 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.~~

PART IV.
SERVICE LIMITATIONS.

§ 4.1. Service limitations.

The following general conditions shall apply to reimbursable outpatient physical therapy, occupational therapy, and speech-language pathology services:

1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

2. Services shall be furnished under a written plan of treatment and must be established, personally signed and dated (as in § 1.1 B), and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

3. A physician recertification shall be required at least every 60 days for acute rehabilitation services and at least annually for long-term, nonacute services and must be personally signed and dated (as in § 1.1 B) by the physician who reviews the plan of treatment. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed. Certification and recertification must be personally signed and dated (as in § 1.1 B) prior to the initiation or continuation of rehabilitation services.

4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. Rehabilitation services are to be considered for termination regardless of the preauthorized visits or services when any of the following conditions are met:

a. No further potential for improvement is demonstrated.

b. Limited motivation on the part of the individual or caregiver is evident.

c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.

e. The established goal or goals serve no purpose toward achieving a significant, meaningful improvement in functional or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

PART V.
AUTHORIZATION FOR SERVICES.

~~§ 5.~~ *§ 5.1.* Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, school divisions, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services. A visit shall be defined as the ~~duration of time~~ *treatment session* that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined *as modality-specific or* in measurements or *in* increments of time.

B. The provider shall request from DMAS authorization for ~~treatments~~ *visits* deemed necessary by a physician beyond the number ~~authorized~~ *of visits not requiring preauthorization (24)* . Documentation for medical justification must include *personally signed and dated (as in § 1.1 B)* physician orders or a plan of care signed and dated by the physician *which includes the elements described in § 4.1* . 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~~ *Care rendered* beyond ~~those allowed~~ *the 24 visits allowed annually* which have not been authorized by DMAS shall not be approved for payment.

C. Payment shall not be made for requests submitted more than 12 months after the termination of services.

PART VI.
DOCUMENTATION REQUIREMENTS.

§ 6. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency,

a rehabilitation agency, or a school ~~district~~ *division* shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and *shall* identify who provided care (include full name and title);

5. Include a copy of the *personally signed and dated (as in § 1.1 B)* physician's orders and plan of care;

6. Describe changes in ~~each~~ *the* patient's condition ~~and~~ , response to the rehabilitative treatment plan , *and appropriate revisions to the plan of care* ;

7. ~~(Except for school districts)~~ Describe a discharge plan which includes the anticipated improvements in functional levels ; *and* the time frames necessary to meet ~~these~~ *the* goals *;* ; ~~and the patient's discharge destination; and~~

~~8. I school districts, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.~~

8. Include an individualized plan of care which describes the anticipated goal-related improvements in functional level and the time frames necessary to meet these goals. The plan of care shall include participation by the appropriate rehabilitation therapist or therapists, the patient, and the family or caregiver:

a. For outpatient rehabilitative services for acute conditions, the plan of care must be reviewed and updated at least every 60 days by the interdisciplinary team.

b. For outpatient services for long-term, nonacute conditions, the plan of care must be reviewed and updated at least annually. In school divisions, the plan of care shall cover outpatient rehabilitative services provided during the school year; and

9. Include discharge summary to be completed by the discipline providing the service at the time that the service is terminated and to include a description of the patient's response to services, level of independence in carrying out learned skills and abilities, assistive technology necessary to carry out and maintain activities and skills, and recommendations for continued services (i.e., referrals to alternate providers, training to caregivers, etc.). When services are provided by school divisions, a discharge summary shall not be required when services are interrupted at the end of a school term; a discharge summary shall be necessary when rehabilitative services are terminated because the patient no longer needs the services.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

~~§ 7. Service limitations.~~

~~The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology services:~~

~~1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.~~

~~2. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.~~

~~3. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.~~

~~4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.~~

~~5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.~~

~~6. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other~~

~~than the skilled rehabilitation professional.~~

VA.R. Doc. No. R94-1009; Filed May 25, 1994, 11:30 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-01-01. Public Participation Guidelines (REPEALING).**

Statutory Authority: §§ 9-6.14:7.1 and 63.1-25 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until August 13, 1994.
(See Calendar of Events section for additional information)

Basis: Section 63.1-25 of the Code of Virginia gives the State Board of Social Services the authority to promulgate regulations for programs that are administered and supervised by the Department of Social Services.

Purpose: The purpose of repealing these public participation guidelines is to allow them to be replaced by a new regulation which addresses the changes to the Administrative Process Act. This allows the state board to carry out its statutory responsibility to develop regulations.

Substance: This regulation is being repealed so it can be replaced by a new regulation which addresses the changes to the Administrative Process Act.

Issues: The issues which this regulation addresses are the policy and purpose of the public participation guidelines, who will be notified when making a substantial change to a regulation and the method of notification, the items to be included in the notice of intent published by The Virginia Register, the creation and maintenance of an advisory list, the formation of ad hoc advisory committees, the items to be included in the training of ad hoc committees, and the basis for the regulation.

The advantage of repealing this regulation for the public is that it allows a new regulation to be developed which assures continued opportunities for the public to provide comments to the state board. The advantage of repealing this regulation for the state board is that it allows a new regulation to be developed which addresses the changes made to the Administrative Process Act. This allows the state board to carry out its statutory responsibility to develop regulations.

Estimated Impact: Individuals, public and private organizations, businesses and governmental bodies with an interest in programs administered and supervised by the Department of Social Services and for which regulations are required will continue to be able to provide comments to the state board according to the new regulations that will replace this repealed regulation. There is no fiscal impact.

Summary:

This regulation describes the way the State Board of Social Services will obtain public input when developing, revising or repealing a regulation.

VA.R. Doc. No. R94-1013; Filed May 25, 1994, 11:21 a.m.

* * * * * * * *

Title of Regulation: **VR 615-01-01:1. Public Participation Guidelines.**

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

Public Hearing Date: N/A – Written comments may be submitted until August 13, 1994.
(See Calendar of Events section for additional information)

Basis: Section 63.1-25 of the Code of Virginia gives the State Board of Social Services the authority to promulgate regulations for programs administered and supervised by the Department of Social Services.

Purpose: The purpose of the public participation guidelines is to establish written procedures to solicit input from "interested parties" prior to formation and drafting of the regulations and during the formation, promulgation and final adoption process of the regulations. This regulation updates the Department of Social Services' public participation guidelines.

Substance: Public comment on regulations will be obtained in these ways:

1. Establishing and maintaining a list of interested persons;

2. Distributing Notices of Intended Regulatory Action and proposed regulations to the Registrar of Regulations;

3. Distributing Notices of Intended Regulatory Action and notices of comment periods to persons on the interested persons list;

4. Holding a public hearing when there is sufficient public interest;

5. Assuring publication of a Notice of Comment Period in a newspaper of general circulation published at the state capital and such other newspapers as appropriate; and

6. Permitting public comment about regulations during the state board's regularly scheduled public comment period of its authorized meetings.

Issues: Development of these public participation guidelines is necessary so the state board can develop regulations for programs administered or supervised by the Department of Social Services. The proposed regulation was developed to comply with the changes made by the General Assembly session to the Administrative Process Act. The state board decided that the proposed regulation allows adequate public participation when developing, revising or repealing a regulation and also allows for maximum administrative efficiency, effectiveness and economy.

Estimated Impact: Individuals, public and private organizations, businesses and governmental bodies with an interest in programs administered and supervised by the Department of Social Services and for which regulations are required will be affected by this regulation. This regulation was developed to comply with the Administrative Process Act with maximum administrative efficiency, effectiveness and economy. There is no fiscal impact.

Impact on Regulated Entities or Persons: Individuals, public and private organizations, businesses and governmental bodies with an interest in programs administered or supervised by the Department of Social Services and for which regulations are required will be affected by this regulation.

Projected Cost to Regulated Entities and the Public: No cost will be incurred.

Identification of Localities Bearing a Disproportionate Share of Costs: No cost is incurred for localities.

Projected Cost to the Department: No cost is incurred for the agency.

Source of Funds to Meet Costs: There is no need for funds to implement the regulation.

Summary:

This regulation describes the way the State Board of Social Services will obtain public input when developing, revising or repealing a regulation. The regulation covers the following topics: petitions from interested parties, solicitation of input, public hearings, and withdrawal of regulations.

VR 615-01-01:1. Public Participation Guidelines.

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:

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

"Approving authority" means State Board of Social Services.

"Board" means State Board of Social Services.

"Commissioner" means the Commissioner of the Department of Social Services or his designee.

"Department" means Department of Social Services.

"Division" means organizational entity within the department, designated by the commissioner, which develops regulations subject to the Administrative Process Act.

"Governor's Executive Order" means any policy or procedure issued by the Governor under § 2.1-41.1 or § 9-6.14:9.1 A of the Code of Virginia establishing the administrative policy and procedures for gubernatorial review and regulatory actions governed by the Administrative Process Act.

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

§ 1.2. Application.

These guidelines apply to all regulations adopted by the board.

PART II.
PUBLIC PARTICIPATION.

§ 2.1. General.

A. The procedures in § 2.3 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 or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1).

B. The department shall follow the policies and procedures established by the Administrative Process Act and the Governor's Executive Order in developing emergency, proposed and final adoption, amendment or repeal of regulations.

C. At the discretion of the approving authority or the department, the public participation procedures in § 2.3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

D. 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 regulations otherwise

adopted in accordance with this regulation.

§ 2.2. Petitions from interested parties.

Any person may petition the agency to develop a new regulation or to adopt, amend or repeal 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 new 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 department shall provide a written response to such petition.

§ 2.3. Solicitation of input.

A. Each division of the department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations under its administration, management or supervision. Persons may request the addition of their name and address to the list at any time. The lists will be updated as additional interested parties are identified. Deletions will be made when lack of interest is determined by the division as a result of periodic contact initiated by the division.

B. The department may form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting, formation or review of a proposal when expertise is necessary to address a specific regulatory interest or issue, or when persons register an interest in the subject of the regulation and in working with the department.

C. Whenever a division identifies a need for the adoption, amendment or repeal of regulations under its administration, management or supervision, it may commence the regulation adoption process according to these procedures.

D. The department shall issue a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation for all regulatory proposals in accordance with the Administrative Process Act. The NOIRA shall state whether the agency intends to hold a public hearing.

E. The commissioner shall disseminate the NOIRA to the public by:

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

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

F. The agency shall consider public comment in drafting proposed regulations.

G. Upon approval by the board of the proposed regulations prepared by the department, the department shall solicit public comment through:

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

2. Publication of a Notice of Comment Period in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate, and

3. Distribution of a notice of comment by mail to persons on the list(s) established under subsection A of this section.

§ 2.4. Public hearings.

A. The board shall permit public comment concerning the adoption, amendment, or repeal of a regulation submitted for its promulgation during the board's regularly scheduled public comment period of its authorized meetings in conformity with the established rules of the board. The board may allow public comment about a proposed regulation at a committee meeting when the proposed regulation is under consideration by the committee.

B. When the NOIRA states that the department does not plan to hold a hearing on the proposed regulation, the department shall schedule a hearing when it determines that there is sufficient public interest in a proposed regulation through receipt of requests for a hearing from 25 people or more. The hearing(s) may be held at any time during the public comment period and at such times and locations as the department decides will best facilitate input from interested persons.

§ 2.5. Withdrawal of regulations.

If the department determines that the process to adopt, amend or repeal any regulation should be terminated after promulgation of the proposed regulation by the approving authority, the department shall present a recommendation and rationale for the withdrawal of the proposed regulation to the approving authority.

VA.R. Doc. No. R94-1008; Filed May 25, 1994, 11:19 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations for Swine, Dairy, and Slaughter and Feeder Cattle.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

The State Water Control Board has **WITHDRAWN** the proposed regulation entitled, "VR 680-14-23, Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations for Swine, Dairy, and Slaughter and Feeder Cattle." The proposed regulation was published in 10:4 VA.R. 816-827 November 15, 1994.

VA.R. Doc. No. R94-1007; Filed May 25, 1994, 11:22 a.m.

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 CONSERVATION AND RECREATION

Board of Conservation and Recreation

Title of Regulation: **VR 215-00-00. Regulatory Public Participation Procedures.**

Statutory Authority: §§ 9-6.14:7.1 and 10.1-107 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the Administrative Process Act (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 the 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 the 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 Director of the Department of Conservation and Recreation 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: 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 Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor Street, Richmond, VA 23219, telephone (804) 786-4570. There may be a charge for copies.

VR 215-00-00. Regulatory Public Participation Procedures.

§ 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.

"Agency" means the Department of Conservation and Recreation, including staff, ~~etc.,~~ established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Board of Conservation and Recreation, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"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, 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 agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

"Virginia law" means the provisions found in the ~~Code of~~ Virginia *statutory law* ~~or the Virginia Acts of Assembly~~ authorizing the approving authority, director, or agency to make regulations ~~or decide cases~~ or containing procedural requirements thereof.

B. Unless specifically defined in Virginia 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 § 9-6.14:1 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 approving authority 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 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 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 the director's initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. ~~The agency 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 approving authority specifically authorizes the director 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 director 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 director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director 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 ~~Notice of Intended Regulatory Action (NOIRA)~~ *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.

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

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

~~c.~~ *e.* A request for comments on the intended regulatory action, to include any ideas to assist the agency 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 director'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 director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this 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 director 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 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 ~~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. 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, location of 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 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~~ *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.

~~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 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.

~~f.~~ *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 to receive comments on the proposed regulation. ~~(In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.)~~ 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 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 director 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 director 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.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register *of Regulations* prior to ~~December 30, 1992,~~ [~~*the effective date of this regulation*~~ *July 13, 1994,*] shall be processed in accordance with *emergency amendments to* the ~~VR 215-01-00.~~ *VR 215-00-00 Regulatory* Public Participation ~~Guidelines~~ *Procedures effective from June 30, 1993, until June 29, 1994, unless*

sooner modified or vacated or superseded by permanent regulations .

B. *This regulation* [~~*when*~~ ~~*effective*~~] *shall supersede and repeal emergency amendments to VR 215-00-00 Regulatory Public Participation Procedures which became effective June 30, 1993.* All regulatory actions for which a NOIRA has not been published in The Virginia Register *of Regulations* prior to ~~December 30, 1992,~~ [~~*the effective date of this regulation*~~ *July 13, 1994,*] shall be processed in accordance with this regulation (VR 215-00-00. Regulatory Public Participation Procedures).

VA.R. Doc. No. R94-997; Filed May 23, 1994, 2:56 p.m.

Virginia Soil and Water Conservation Board

Title of Regulation: **VR 625-00-00:1. Regulatory Public Participation Procedures.**

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-561, 10.1-603.18, 10.1-605 and 10.1-637 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which comply with new provisions of the Administrative Process Act (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 the 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 the 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 Director of the Department of Conservation and Recreation 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: 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 Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor Street, Richmond, VA 23219, telephone (804) 786-4570. There may be a charge for copies.

VR 625-00-00:1. Regulatory Public Participation Procedures.

§ 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.

"Agency" means the Department of Conservation and Recreation, including staff, ~~etc.,~~ established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Virginia Soil and Water Conservation Board, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"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 actions.

"Virginia law" means the provisions found in the ~~Code of~~ Virginia *statutory law* ~~or the Virginia Acts of Assembly~~ authorizing the approving authority, director, or agency to make regulations ~~or decide cases~~ or containing procedural requirements thereof.

B. Unless specifically defined in Virginia 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 § 9-6.14:1 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 approving authority 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 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 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 the director's initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. ~~The agency 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 approving authority specifically authorizes the director 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 director 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 director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action

(NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director will 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 ~~notice of intended regulatory action (NOIRA)~~ *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.

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

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

~~c.~~ *e.* A request for comments on the intended regulatory action, to include any ideas to assist the agency 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 director'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 director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this 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 director 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 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 ~~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. 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, location of 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 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~~ *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.

~~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 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.

~~f.~~ *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. ~~(In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.)~~ 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 agency determine 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, and 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 director 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 director 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.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register *of Regulations* prior to ~~December 30, 1992,~~ [~~*the effective date of this regulation*~~ *July 13, 1994,*] shall be processed in accordance with the ~~VR 625-00-00.~~ *emergency amendments to VR 625-00-00:1 Regulatory* Public Participation ~~Guidelines~~ *Procedures effective from June 30, 1993, until June 29, 1994, unless*

sooner modified or vacated or superseded by permanent regulations .

B. *This regulation* [~~*when effective*~~] *shall supersede and repeal emergency amendments to VR 625-00-00:1 Regulatory Public Participation Procedures which became effective June 30, 1993.* All regulatory actions for which a NOIRA has not been published in The Virginia Register *of Regulations* prior to ~~December 30, 1992,~~ [~~*the effective date of this regulation*~~ *July 13, 1994,*] shall be processed in accordance with this regulation (VR 625-00-00:1. Regulatory Public Participation Procedures).

VA.R. Doc. No. R94-998; Filed May 23, 1994, 2:57 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Title of Regulation: **VR 240-03-2. Regulations Relating to Private Security Services.**

Statutory Authority: § 9-182 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

These final regulations rescind existing emergency regulations relating to private security services. These final regulations are promulgated pursuant to the regulation issuing authority granted to the Criminal Justice Services Board by subsections A and B of § 9-182 of the Code of Virginia.

The regulations set forth a regulatory program that protects the public from unscrupulous, incompetent or unqualified persons engaging in the activities of private security services, and prescribe standards and procedures to guide the department and inform the general public of the methods, process, and requirements relating to the administration, operation, licensing, registration, training, and certification of persons engaged in the activities of private security services.

The final regulations establish methods, procedures, and requirements for obtaining a private security services business license, a private security services registration or a training certification. Additionally, these regulations set forth training standards and the requirements relating to administering and conducting private security services training.

Essentially, these regulations address the operation, administration and licensure procedures concerning private security businesses; establish methods, standards, and procedures for training, registration, or certification of private security services business personnel; and set forth standards of conduct and prohibited practices for persons engaged in the activities of private security services.

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 Paula Scott Dehetre, Regulatory Coordinator, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-4000. There may be a charge for copies.

VR 240-03-2. Regulations Relating to Private Security Services.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

[*"Alarm respondent" means a natural person who responds to the first signal of alarm of the home, business or property of the end user.*]

[~~*"Armed guard"*~~*"Armed security officer"*] *means a* [~~*guard*~~ *security officer*] *as defined below, who carries or has immediate access to a firearm or other deadly weapon in the performance of his duties.*

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Bodyguard" [~~*or "executive protection specialist"*~~] *means a* [~~*guard*~~ *security officer*] *, armed or unarmed as defined herein* [*until June 30, 1995*] .

[*"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used primarily to summon aid for other emergencies.*]

"Certified school director" means the chief administrative officer of a certified training school.

"Certified training school" means a training school which provides instruction in at least the minimum training [

~~standards~~] mandated and is certified by the department for the specific purpose of training private security services business personnel.

"Class" means a minimum of 50 minutes of instruction on a particular subject.

["Combat load" means tactical loading of shotgun while maintaining coverage of threat area.]

"Compliance agent" means a natural person who is an owner of, or employed by, a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with all applicable requirements as provided in § 9-183.3 of the Code of Virginia.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Department" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

["Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; or (ii) respond to or cause a response to electronic security equipment for an end user.

"Electronic security employee" means a natural person who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent or status of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices including burglar alarms or holdup alarms or cameras used to detect intrusion, concealment or theft.

"Electronic security sales representative" means a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.]

"Firearms certification" means the verification of successful completion of either initial or retraining requirements for handgun or shotgun training, or both.

"Firm" means a business entity, regardless of method of organization, applying for a private security services business license or for the renewal or reinstatement of same.

[~~"Guard" means any person employed by a private security service business to safeguard and protect persons and property or to prevent theft, loss, or concealment of any tangible or intangible personal property.~~]

"Guard dog handler" means any person employed by a private security services business to handle dogs in the performance of duty in protection of property or persons.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Licensed firm" means a business entity, regardless of method of organization, which holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

"On duty" means that time during which a registrant or unarmed [~~guard~~ security officer] receives or is entitled to receive compensation for employment for which a registration or training certification is required and that time while he is traveling, immediately before and after the period of actual duty, to and from the place of duty.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

["Personal protection specialist," on and after July 1, 1995, means any person who engages in the business of providing protection from bodily harm to another.]

"Principal" means any sole proprietor, officer or director of the corporation, member of the association, or partner of a licensed firm or applicant for licensure.

"Private investigator" [~~or "private detective"~~] means any person who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, [(i)] armored car personnel, [~~unarmed guards, armed guards,~~ security officers, personal protection specialists,] private investigators, [~~private detectives,~~]

couriers, or guard dog handlers to another person under contract, express or implied [; or (ii) alarm respondents, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians to another person under contract, express or implied] .

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed [~~guard~~ security officer] , armed [~~guard~~ security officer] /courier, armored car personnel, guard dog handler [~~or private investigator/private detective~~ private investigator, personal protection specialist, alarm respondent, central station dispatcher, electronic security employee, electronic security sales representative or electronic security technician] .

"Registrant" means any individual who has met the requirements for registration in any of the categories listed under "registration category."

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to obtain a registration from the department pursuant to [Part V of] this regulation.

"Registration category" means any one of the following categories: (i) armed [~~guard~~ security officer] /courier, (ii) guard dog handler, (iii) armored car personnel, (iv) private investigator [~~/private detective~~] , (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, or (ix) electronic security technician] .

["Security officer" means any person employed by a private security service business to safeguard and protect persons and property or to prevent theft, loss, or concealment of any tangible or intangible personal property.]

"Session" means a group of classes comprising the total hours of mandated training in any of the following categories: unarmed [~~guard~~ security officer] , armed [~~guard~~ security officer] /courier, [personal protection specialist,] armored car personnel, guard dog handler, private investigator [~~/private detective~~] , [alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician or] or compliance agent.

"Store detective" means a [~~guard~~ security officer] in the context of these regulations.

"Training certification" means verification of the successful completion of any training requirement established in these regulations.

"Training requirement" means any initial or retraining standard established in these regulations.

"Unarmed [~~guard~~" security officer"] means a [~~guard~~ security officer] who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties.

"Unarmed [~~guard~~ security officer] training certification" means verification that the individual has passed the Virginia Criminal Records Search (VSP-167), and of the successful completion of either initial or in-service unarmed [~~guard~~ security officer] training requirements.

"Undercover person" means a private investigator [~~/private detective~~] in the context of these regulations.

"Uniform" means any clothing with a badge, patch or lettering which clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

PART II.
SCHEDULE OF FEES.

§ 2.1. Fees.

A. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, registration, certification and other administrative requests for services relating to private security services.

Categories	*Fees*
Initial business license	*$600*
Business license renewal	*$250*
Initial compliance agent	*$126*
Initial registration	*$ 76*
Registration renewal	*$ 35*
Initial training school	*$500*
Training school renewal	*$250*
Firearms training credit	*$ 25*
Instructor	*$ 50*
Instructor renewal	*$ 10*
Initial unarmed [~~guard~~ security officer] training certification	*$ 15*
Unarmed [~~guard~~ security officer] training certification renewal	*$ 15*
Application for exemption	*$ 35*
Unarmed [~~guard~~ security officer] training session	*$ 10*
Private investigator [~~/private detective~~] training session	*$ 25*
[Armored car training session	*$ 15]*
Armed [~~guard~~ security officer] training session	*$ 15*
Firearms training session	*$ 10*
Guard dog handler training session	*$ 15*
In-service training session	*$ 10*
Firearms retraining session	*$ 10*
Fingerprint card processing	*$ 41*
Additional registration categories	*$ 25*
Replacement photo identification	*$*

§ 2.2. Reinstatement fee.

A. The department shall collect a reinstatement fee for registration, license, or certification, renewal applications not received on or before the expiration date of the expiring registration, license, or certification.

B. The reinstatement fee shall be 50% above and beyond the renewal fee of the registration, license, certification, or any other credential issued by the department wherein a fee is established and renewal is required.

§ 2.3. Dishonor of fee payment due to nonsufficient funds.

A. The department may suspend the registration, license, certification, or authority it has granted any person, licensee or registrant who submits a check or similar instrument for payment of a fee required by statute or regulation which is not honored by the financial institution upon which the check or similar instrument is drawn.

B. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person, registrant or licensee may request that the suspended registration, license, certification, or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompany the request. Suspension under this provision shall be exempt from the Administrative Process Act.

PART III.
LICENSING PROCEDURES AND REQUIREMENTS.

§ 3.1. Initial licensing requirements for a private security services business.

Each person seeking a license as a private security services business shall file an application furnished by the department accompanied by a nonrefundable application fee of $600. Each principal of the business entity applying for a private security services business license must be listed on the application. Each person listed on the application shall complete a supplemental business license application and submit one completed set of two fingerprint cards along with a nonrefundable fee of $41; however, a maximum of two sets of fingerprint cards may accompany the application at no additional cost. Licenses shall be issued for a period not to exceed 12 months. All forms shall be completed in full compliance with the instructions provided by the department. Applicants shall meet or exceed the requirements of §§ 3.2 through 3.14 prior to the issuance of a license.

§ 3.2. Surety bond or insurance required.

Each person seeking a license as a private security services business shall secure a surety bond in the amount of $25,000, executed by a surety company authorized to do business in Virginia, or a certificate of insurance showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 and $300,000, issued by an insurance company authorized to do business in Virginia.

§ 3.3. Irrevocable consent.

Each nonresident applicant for a license or nonresident licensee shall, on a form provided by the department, file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth.

§ 3.4. Compliance agent; certification requirements; duties and responsibilities; restriction; retention and replacement.

A. Each firm applying for a license as a private security services business shall designate at least one individual as compliance agent who is not designated as compliance agent for any other licensee. To become a compliance agent, an individual shall file a properly completed application furnished by the department and conform to the following requirements and procedures:

1. Be a minimum of 18 years of age;

2. Have three years of managerial or supervisory experience in a private security services business, or in a federal, state, or local law-enforcement agency, or in a related field;

3. Successfully complete the applicable compliance agent training requirements pursuant to §§ 7.9 F and 7.10 E and achieve a minimum of 70% on the compliance agent examination;

4. Be designated by a licensed private security services business as its compliance agent;

5. Be in good standing in every jurisdiction where licensed or registered in private security services; and

6. Submit two completed fingerprint cards, as provided by the department, and a nonrefundable application fee of $126.

B. The compliance agent shall at all times comply with the following:

1. Ensure that the licensed firm is in full compliance with the Code of Virginia and these regulations;

2. Ensure that VSP Form-167 has been processed by the Virginia State Police and maintained in the firm's files for each unarmed guard as required by § 9-183.3 of the Code of Virginia;

3. Ensure the maintenance of documentary evidence that each unarmed guard has complied with, or been exempted from, the compulsory minimum training standards as required by § 9-183.3 of the Code of

Virginia;

4. Ensure that the licensed firm does not utilize or otherwise employ any person as an unarmed [~~guard~~ security officer] in excess of [~~120~~ 90] days prior to the completion of the compulsory minimum training standards for unarmed [~~guard~~ security officer] ;

5. Maintain training, employment, and payroll records which document the licensee's compliance with the Code of Virginia and these regulations;

6. Ensure that an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth is submitted to the department within 30 days after the licensee moves to a location outside Virginia.

C. No individual shall be certified by the department as a compliance agent for more than one licensee at any given time.

D. 1. Each licensee shall maintain at least one individual as a compliance agent who has met the requirements of § 3.4 of these regulations and has been certified by the department.

2. Each licensee shall notify the department in writing within 10 calendar days of the termination of employment of a certified compliance agent.

3. Within 90 days of termination of the employment of a licensee's sole remaining compliance agent, the licensee shall submit, on a form provided by the department, the name of a new compliance agent who has met the requirements of § 3.4 of these regulations.

§ 3.5. Criminal history records search.

Upon application for a private security services business license, each compliance agent and principal of the applicant firm shall submit to the department one completed set of two fingerprint cards on forms provided by the department, and a $41 nonrefundable fee for each set of fingerprint cards beyond the allowable two sets provided with the initial business application. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

§ 3.6. Unclassifiable fingerprint cards.

Fingerprints cards found to be unclassifiable will be returned to the applicant. Action on the application will be suspended pending the resubmittal of classifiable fingerprint cards. The applicant should be so notified in writing and shall submit new fingerprint cards and a nonrefundable fee of $41 to the department before the processing of his application shall resume. However, no such fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.

§ 3.7. Basis for denial of licensure.

A. The department may deny licensure to a firm in which any compliance agent or principal has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage. Any plea of nolo contendere shall be considered a conviction for the purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

B. The department may deny licensure to a firm in which any compliance agent or principal has not maintained good standing in every jurisdiction where licensed or registered or has had his license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for licensure in Virginia.

C. The department may deny licensure to a firm for other just cause.

§ 3.8. Physical address.

Each firm applying for a private security services business license shall provide the department with its physical address in Virginia at which records required to be maintained by the Code of Virginia and these regulations are kept and available for inspection by the department. A post office box is not a physical address.

§ 3.9. Authority to inspect.

Each licensee shall permit the department to inspect, review, or copy those documents, business records or training records in the compliance agent's or licensed firm's possession that are required to be maintained by the Code of Virginia and these regulations.

§ 3.10. Display of license.

The private security services business license issued by the department shall be prominently displayed for public inspection at all times.

§ 3.11. Change of ownership or entity.

A. Each licensee shall report in writing to the department any change in its ownership or principals which does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change and shall include the application form, fingerprint cards and a nonrefundable fee of $41 for each new individual.

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

§ 3.12. Change of name or address.

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

§ 3.13. Transfer of license prohibited.

Each license shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity.

§ 3.14. Exemptions.

The director may grant a temporary exemption from the equirement of licensure for a period of not more than 30 ays in a situation deemed an emergency by the department.

PART IV.
RENEWAL OF LICENSE.

Article 1.
License Expiration, Renewal, Reinstatement.

§ 4.1. Renewal notification; invalid license.

A. The department will mail to the last known address of the licensee a renewal notification. Failure of the licensee to renew prior to the expiration of the license shall be the sole responsibility of the [~~license~~ licensed] firm's compliance agent.

B. A private security services business license not renewed on or before the expiration date of the license shall become null and void. Operating a private security services business without a valid private security services business license is a violation of § 9-183.3 of the Code of Virginia and these regulations.

§ 4.2. License expiration.

All licenses issued to private security services businesses shall be valid for a period not to exceed 12 months.

§ 4.3. License renewal; reinstatement.

A. Applications for license renewal must be received by the department at least 30 days prior to expiration. License renewal applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus reinstatement fees.

B. The department may renew the license for a period not to exceed 12 months from the expiration date of the license when the following are received by the department:

1. A properly completed renewal application;

2. A nonrefundable license renewal fee of $250; and

3. Documentation that the firm has in force a policy of comprehensive general liability insurance or a surety bond in at least the amount required by § 3.2 of these regulations.

C. Each compliance agent listed on the license renewal application [~~must~~ shall] have satisfactorily completed all applicable training requirements.

D. Each principal or compliance agent listed on the license renewal application shall be in good standing and free of disciplinary action in every jurisdiction where licensed or registered.

E. A renewal application received by the department within 180 days following the expiration date of the license shall be accompanied by a nonrefundable renewal fee of $250 and a nonrefundable reinstatement fee of $125.

F. No license shall be renewed or reinstated when the application and fee are received by the department more than 180 days following the expiration date of the license. After that date, the applicant shall meet all initial licensing requirements.

G. The department may deny renewal or reinstatement of a license for the same reason as it may refuse initial licensure or discipline a licensee.

PART V.
REGISTRATION PROCEDURES AND REQUIREMENTS.

§ 5.1. Initial registration requirements.

Individuals seeking registration under § 9-183.3 of the Code of Virginia shall file an application furnished by the department which shall be accompanied by a nonrefundable application fee of $76. Each applicant shall meet or exceed the following requirements prior to the issuance of a registration:

1. Be at least 18 years of age;

2. Disclose to the department his physical address (a post office box is not a physical address);

3. Submit one set of two completed fingerprint cards on forms provided by the department; and

4. Provide evidence of the successful completion of all initial training requirements for each registration category requested.

§ 5.2. Additional categories and training certifications.

Registered individuals seeking additional registration categories or training certifications shall file an application, furnished by the department, documenting that the following training requirements for the requested categories or training certifications have been met:

1. The nonrefundable fee for each filing is $25.

2. Individuals may avoid paying a separate fee for additional categories or training certifications when evidence of satisfactory completion of the training requirements for each additional category or certification accompanies a renewal application for registration.

§ 5.3. Criminal history records search.

Upon receipt of an initial registration application, the department shall submit the fingerprints of the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the applicant has a record of conviction. Applicants submitting unclassifiable fingerprint cards shall be required to submit new fingerprint cards along with a nonrefundable fee of $41. However, no such fee shall be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted. [In the case of registration renewal application for armored car personnel only, a Virginia Criminal History Records search and a national criminal records search to determine whether the applicant has a record of conviction shall be conducted.]

§ 5.4. Temporary registration.

The department may issue a letter of temporary registration to individuals seeking registration under § 9-183.3 of the Code of Virginia for not more than 120 days while awaiting the results of the national fingerprint search, provided the applicant has met the conditions and requirements set forth in §§ 5.1 through 5.5 of these regulations, and the Virginia Criminal Records search proved negative.

§ 5.5. Duties and responsibilities of registrant.

The registrant must at all times comply with the following:

1. Carry the registration issued by the department at all times while on duty;

2. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed [~~guard~~ security officer] from being employed by a nonlicensee as provided for in § 9-183.2 of the Code of Virginia;

3. Carry or have immediate access to firearms while on duty only while possessing a valid firearms certification;

4. Carry a firearm concealed while on duty only with the expressed authorization of the licensed private security services business employing the registrant and only in compliance with § 18.2-308 of the Code of Virginia;

5. Transport, carry and utilize firearms while on duty only in a manner which does not endanger the public health, safety and welfare;

6. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest;

7. Engage in no conduct which through word, deed or appearance suggests that a registrant is a law-enforcement officer or other government official;

8. Display one's registration while on duty in response to the request of a law-enforcement officer or other orderly person; however, this requirement shall not apply to armored car personnel;

9. Never perform any unlawful [, or] negligent [~~or improper~~] act resulting in a loss, injury or death to any person;

10. Wear while on duty, the military style or law-enforcement style uniform of a private security licensee which has:

a. At least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. No patch or other writing (i) containing the word "police" or any other words suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the words "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are

also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction;

11. Never use a vehicle in the conduct of a private security services business which uses or displays a flashing red, blue or amber light except when specifically authorized by the Code of Virginia;

12. Never use or display the state seal of Virginia as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement;

13. Never display the uniform, badge or other insignia while not on duty;

14. During the course of any private investigation, never provide information obtained by any licensed firm and its employees to any person other than the client who employed the licensee to obtain that information, without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, or from the department, shall not constitute a violation of these regulations. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of these regulations;

15. Inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage;

16. Inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed;

17. Acting as a registrant only in such a manner as to not endanger the public health, safety and welfare;

18. Engage in no [~~improper,~~] unethical, fraudulent, or dishonest conduct;

19. Never represent as one's own a registration issued to another individual, or represent oneself as certified compliance agent of a licensee, training school, school director or instructor unless so certified by the department;

20. Never falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, unarmed [~~guard~~ security officer] training certification, or certification as a compliance agent, training school, school director or instructor.

§ 5.6. Replacement photo identification.

Registered individuals seeking a replacement photo identification shall submit to the department:

1. A properly completed application;

2. Copy of training completion forms; and

3. A nonrefundable processing fee of $15.

§ 5.7. Transfer of registration prohibited.

Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be utilized by any individual other than the individual named on the registration. No registration shall be transferred to another individual.

§ 5.8. Change of name or address.

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

§ 5.9. Basis for registration denial.

A. The department may deny registration to any person who:

1. Has been convicted in any jurisdiction of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, property damage or physical injury. Any plea of nolo contendere shall be considered a conviction for purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction; or

2. Has failed to maintain his license or registration in good standing in every jurisdiction where licensed or registered as private security personnel, or has been fined or had any private security license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for registration or licensure in Virginia.

B. The department may deny registration to an individual for other just cause.

§ 5.10. Exemptions.

The director may grant a temporary exemption from the

requirement of registration for a period of not more than 30 days in a situation deemed an emergency by the department.

§ 5.11. Registration expiration, renewal, reinstatement.

A. The department will mail a renewal notification to the last known address of the registrant. Failure of the registrant to renew prior to the expiration date of the registration shall be the sole responsibility of the individual registrant.

B. A private security services registration not renewed on or before the expiration date of the registration shall become null and void. Performing private security services duties without a valid private security services registration is a violation of the Code of Virginia.

C. 1. All registrations issued after July 1, 1993, shall be valid for a period not to exceed 12 months.

2. All registrations issued prior to July 1, 1993, shall expire on the expiration date of the registration.

D. 1. Applications for registration renewal must be received by the department at least 30 days prior to expiration. A registration renewal application received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus nonrefundable reinstatement fees.

2. The department may renew the registration for a period not to exceed 12 months from the expiration date of the expiring registration when the following are received by the department:

a. A properly completed renewal application;

b. Evidence of satisfactory completion of the applicable training or retraining requirements for each registration category and each training certification requested; and

c. A nonrefundable registration renewal fee of $35.

E. 1. Registration renewal applications received within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of $35 and a nonrefundable reinstatement fee of $17.50.

2. No registration shall be renewed or reinstated when the application for renewal and fee are received by the department after 180 days following the expiration date of the registration. After that date, the applicant shall meet then current initial registration requirements.

3. The date on which the application and fee are received by the department shall determine whether the registrant is eligible for renewal or reinstatement or is required to apply for initial registration.

4. The department may deny renewal or reinstatement of a registration for the same reason as it may refuse initial registration or discipline a registrant.

§ 5.12. Firearms certification, expiration, renewal.

A. An individual who has successfully completed the handgun training requirements may submit a properly completed application for registration with handgun certification.

1. Handgun certification will be documented on the registration and shall expire on the expiration date of the registration.

2. The department may grant a handgun certification upon receipt of the following:

a. A properly completed application; and

b. Documentary evidence of satisfactory completion of the applicable handgun training requirements.

B. An individual who has successfully met the handgun training requirements, and has successfully completed the shotgun training requirement, may submit a properly completed application for registration with shotgun certification.

1. Shotgun certification will be documented on th registration and shall expire on the expiration date of the registration.

2. The department may grant a shotgun certification upon receipt of the following:

a. A properly completed application; and

b. Documentary evidence of satisfactory completion of the applicable shotgun training requirements.

C. All handgun and shotgun certifications shall be issued for a period not to exceed 12 months and shall become null and void on the expiration date of the registration. "Firearms endorsements" issued prior to July 1, 1993, shall become null and void on the expiration date of the endorsement.

D. The department may renew handgun and shotgun certifications for a period not to exceed 12 months from the expiration date of the registration when the following are received by the department:

1. A properly completed registration renewal application;

2. Evidence of satisfactory completion of all applicable training, firearms retraining and in-service training requirements; and

3. A nonrefundable fee of $35. (One $35 fee fo.

registration renewal includes firearms certifications if all requirements have been met).

E. The department may deny renewal of a firearms certification for the same reason as it may refuse initial firearms certification or discipline a registrant.

PART VI.
UNARMED [~~GUARD~~ SECURITY OFFICER]
TRAINING CERTIFICATION PROCEDURES AND REQUIREMENTS.

§ 6.1. Training certification.

A. Each person employed or utilized as an unarmed [~~guard~~ security officer] shall successfully complete the compulsory minimum training standards for unarmed [~~guards~~ security officers] and make application to the department for the issuance of an unarmed [~~guard~~ security officer] training certification, except that such persons may be employed for not more than [~~120~~ 90] days while completing the compulsory minimum training standards.

B. Individuals seeking unarmed [~~guard~~ security officer] training certification shall file an application provided by the department which shall be accompanied by a nonrefundable processing fee of $15. Each applicant shall meet or exceed the following requirements prior to issuance of an unarmed [~~guard~~ security officer] training certification:

1. Be at least 18 years of age;

2. Disclose to the department a physical address (a post office box is not a physical address);

3. Provide documentary evidence of compliance with the initial unarmed [~~guard~~ security officer] training requirement and, if appropriate, in-service training requirements for unarmed [~~guards~~ security officers] ; and

4. Have the compliance agent of his employer attest that documentary evidence exists that an investigation to determine suitability of the applicant has been conducted and reviewed as required by the Code of Virginia.

C. Each person employed or utilized as an unarmed [~~guard~~ security officer] on or after [~~the effective date of these regulations~~ July 13, 1994,] shall comply with the unarmed [~~guard~~ security officer] training certification requirements.

§ 6.2. Criminal history records search.

Upon hiring a person to be employed as an unarmed [~~guard~~ security officer] , the compliance agent of the business shall submit VSP Form 167 signed by the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search to determine whether the applicant has a record of conviction.

§ 6.3. Duties and responsibilities.

The unarmed [~~guard~~ security officer] must at all times comply with the following:

1. Carry unarmed [~~guard~~ security officer] training certification issued by the department at all times while on duty;

2. Perform those duties authorized by these regulations only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is employed as an unarmed [~~guard~~ security officer] from being employed by a nonlicensee as provided for in § 9-183.2 of the Code of Virginia;

3. Never carry or have immediate access to firearms while on duty;

4. Engage in no conduct which through word, deed or appearance suggests that an unarmed [~~guard~~ security officer] is a law-enforcement officer or other government official;

5. Display one's certification while on duty in response to the request of a law-enforcement officer or other orderly person;

6. Never perform any unlawful [; or] negligent [~~or improper~~] act resulting in a loss, injury or death to any person;

7. Wear while on duty, the law-enforcement style or military style uniform of a private security licensee which has:

a. At least one insignia clearly identifying the name of the licensed firm employing the individual and a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. No patch or other writing (i) containing the word "police" or any other words suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction;

8. Never use a vehicle in the conduct of a private security services business which uses or displays a flashing red, blue or amber light except when specifically authorized by the Code of Virginia;

9. Never use or display the state seal of Virginia as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement;

10. Never display the uniform, badge or other insignia while not on duty;

11. Inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage;

12. Inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed;

13. Acting as an unarmed [~~guard~~ security officer] only in such a manner as to not endanger the public health, safety and welfare;

14. Engage in no [~~improper,~~] unethical, fraudulent, or dishonest conduct;

15. Never represent as one's own certification issued to another individual, or representing oneself as a certified compliance agent of a licensee, school director or instructor unless certified as such by this department;

16. Never falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, unarmed [~~guard~~ security officer] training certification, or certification as a compliance agent, training school, school director or instructor.

§ 6.4. Change of name or address.

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

§ 6.5. Transfer of certification prohibited.

Each unarmed [~~guard~~ security officer] training certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No unarmed [~~guard~~ security officer] training certification shall be utilized by any individual other than the individual named on the certification. No unarmed [~~guard~~ security officer] training certification shall be transferred to another individual.

§ 6.6. Replacement photo identification.

Unarmed [~~guards~~ security officers] seeking a replacement photo identification shall submit to the department:

1. A properly completed application; and

2. A nonrefundable processing fee of $15.

§ 6.7. Training certification denial.

The department may deny an unarmed [~~guard~~ security officer] training certification to any person who has been convicted in any jurisdiction of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, property damage or physical injury. Any plea of nolo contendere shall be considered a conviction for purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be prima facie evidence of such conviction. The department may deny certification for other just cause.

§ 6.8. Certification expiration, renewal, reinstatement.

A. The department will mail a renewal notification to the last known address of the individual. Failure of the individual to renew prior to the expiration date of the unarmed [~~guard~~ security officer] training certification shall be the sole responsibility of the individual.

B. An unarmed [~~guard~~ security officer] training certification not renewed on or before the expiration date of the certificate shall become null and void. Performing private security services duties without a valid unarmed [~~guard~~ security officer] training certification is a violation of the Code of Virginia and these regulations.

C. An unarmed [~~guard~~ security officer] training certification shall be valid for a period not to exceed 24 months from the date of issue. All such training certifications shall expire on the expiration date of the unarmed [~~guard~~ security officer] training certification.

D. 1. An application for unarmed [~~guard~~ security officer] training certification renewal must be received by the department at least 30 days prior to expiration. Unarmed [~~guard~~ security officer] training certification applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus reinstatement fees.

2. The department may renew the unarmed [~~gua~~ security officer] training certification for a period n

to exceed 24 months from the expiration date of the unarmed [~~guard~~ security officer] training certification when the following are received by the department:

a. A properly completed renewal application;

b. Evidence of satisfactory completion of the in-service training requirements; and

c. A nonrefundable renewal fee of $15.

E. 1. Renewal applications received within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of $15 and a nonrefundable reinstatement fee of $7.50.

2. No unarmed [~~guard~~ security officer] training certification shall be renewed or reinstated when the application for renewal and fee are received by the department after 180 days following the expiration date of the unarmed [~~guard~~ security officer] training certification. After that date, the applicant shall meet then current initial unarmed [~~guard~~ security officer] training certification requirements.

3. The date on which the application and fee are received by the department shall determine whether the individual is eligible for renewal or reinstatement or is required to apply for initial unarmed [~~guard~~ security officer] training certification.

4. The department may deny renewal or reinstatement of an unarmed [~~guard~~ security officer] training certification for the same reason as it may refuse the initial certification or discipline an unarmed [~~guard~~ security officer] .

PART VII.
COMPULSORY MINIMUM TRAINING STANDARDS FOR PRIVATE SECURITY SERVICES BUSINESS PERSONNEL.

Article 1.
Applicability and Scope.

§ 7.1. Entry level training.

Each person employed by a private security services business or applying to the department for registration as an armed [~~guard~~ security officer] /courier, [personal protection specialist,] armored car personnel, guard dog handler, [~~or~~] private investigator [~~/private~~ ~~detective~~] , [alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician] as defined by § 9-183.1 of the Code of Virginia, or applying to the department for training certification as an unarmed [~~guard~~ security officer] as required by § 9-183.3 of the Code of Virginia, or for certification as a compliance agent as required by § 9-183.3 of the Code of Virginia, who has not met the compulsory minimum training standards prior to [~~the effective date of these regulations~~ July 13, 1994] , must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with §§ 7.2 and 7.3 of these regulations.

§ 7.2. Exemptions.

Persons who meet the statutory requirements as set forth in § 9-182 of the Code of Virginia and who have completed a law-enforcement entry level training course may apply for [~~an~~ a partial] exemption from the mandatory training. Individuals requesting such exemption shall file an application furnished by the department. The nonrefundable application fee for each filing is $35. The department may issue such [~~exemption, or~~] partial exemption, on the basis of individual qualifications as supported by required documentation. The department shall not issue more than a partial exemption to those persons who have remained out of law-enforcement employment in excess of 24 months. Those applying for and receiving exemptions must also comply with all firearms requirements, if applicable, and all regulations promulgated by the board. Each person receiving [~~an exemption or~~] partial exemption must apply to the department for registration within 12 months from date of issuance, otherwise the [~~exemption or~~] partial exemption shall become null and void.

§ 7.3. Credit for approved firearms training.

The department may authorize credit for firearms training received at a department approved school which meets or exceeds the compulsory minimum training standards required for private security services business personnel, provided that such training has been successfully completed within 12 months of the date of application. Applicants requesting credit for firearms training shall file an application furnished by the department. The nonrefundable application fee for each filing is $25.

§ 7.4. Firearms training.

Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.

§ 7.5. In-service training.

Each person registered with the department as an armed [~~guard~~ security officer] /courier, [personal protection specialist,] armored car personnel, guard dog handler, private investigator [~~/private~~ ~~detective~~] , [alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician,] or applying to the department for training certification as an unarmed [~~guard~~ security officer] , or certified by the department to act as a compliance agent, shall complete the compulsory in-service training standard once during each 24-month period of registration or certification as determined by the department.

1. Each person registered as armed [~~guard~~ security officer] /courier, [personal protection specialist,] guard dog handler, armored car personnel, [~~and~~] private investigator [~~/private detective~~] , [alarm respondent, central station dispatcher, electronic security sales representative, and electronic security technician] shall complete applicable in-service training within each 24-month period [~~following initial training completion date~~ of registration] .

2. Each person employed or utilized as an unarmed [~~guard~~ security officer] shall complete applicable in-service training within each 24-month period of [~~the completion date of initial unarmed guard training requirements~~ certification] .

3. Each person certified as a compliance agent shall complete compliance agent in-service training within each 24-month period of [~~initial training date~~ certification] .

§ 7.6. Instructor recertification.

Each person certified as an instructor shall complete recertification training within each 36-month period of initial certification date.

§ 7.7. Compulsory minimum entry level training by category.

Total hours do not include time for examinations, practical exercises and range qualification. Refer to § 7.9 for the minimum training requirements for each category.

	Hours
Unarmed [~~guard~~ security officer]	16
Armed [~~guard~~ security officer] /courier	24
Armored car personnel	[~~24~~ 20]
Guard dog handler	28
Private investigator [~~/private detective~~]	60
Compliance agent	6

§ 7.8. Compulsory minimum in-service training by category.

Total hours do not include time for examinations.

Refer to § 7.10 for the minimum in-service training requirements for each category.

	Hours
Unarmed [~~guard~~ security officer]	4
Armed [~~guard~~ security officer] /courier	4
Armored car personnel	4
Guard dog handler	8
Private investigator [~~/private detective~~]	8
Compliance agent	4

§ 7.9. Minimum entry level training requirements.

A. The entry level curriculum for unarmed [~~guard~~ security officer,] armed [~~guard~~ security officer] /courier, and guard dog handler sets forth the following areas identified as:

Core subjects	Hours
Administration and security orientation/ regulations	4
Legal authority	4
Emergency and defensive procedures	8
Written examination	
Total hours (excluding exam)	16

B. Armed [~~guard~~ security officer] /courier ..... 1~

In addition to the successful completion of the core subjects curriculum (§ 7.9 A), each armed [~~guard~~ security officer/] courier must also comply with firearms training requirements. (Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.)

	Hours
Handgun classroom training (refer to § 9.2)	8
Shotgun classroom instruction, if applicable (refer to § 9.3)	1
Written firearms examination	
Range qualification. No minimum hours required (refer to § 9.3). Each person who carries or has immediate access to firearms in the performance of duty shall qualify with each type and calibre of firearm to which he has access.	
Total hours (excluding examination, shotgun) classroom instruction and range qualification	24

C. Armored car personnel. ..... Hours

Armored car orientation/ [state] regulations	[4 3]
[~~Statutory authorization~~	~~4~~

Armored car procedures ..... [~~8~~ 9]

Written examination

Firearms training (§ 7.9 B) 8

Total hours (excluding examinations and range qualification) ..... [~~24~~ 20]

D. Guard dog handler ..... *Hours*

In addition to the successful completion of the core subjects curriculum (§ 7.9 A), each guard dog handler must also comply with the following requirements:

Basic obedience retraining 6

Canine patrol techniques 6

Written examination

Total hours (excluding examinations) 28

E. Private investigator [~~/private detective~~] ..... *Hours*

Investigator orientation/regulations 8

General investigative techniques 20

Interviewing techniques 8

Criminal law, procedure & rules of evidence 8

Civil law, procedure & rules of evidence 10

Collecting and reporting information 6

Written comprehensive examination

Three practical field exercises

Total hours in classroom (excluding written examination and practical exercises) 60

F. Compliance agent. ..... *Hours*

Industry overview and responsibilities: regulations review, business practices, ethical standards, records requirements and other related issues 6

Written examination

Total hours (excluding written examination) 6

G. Firearms training. ..... *Hours*

Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.

Handgun classroom training (refer to § 9.2) 8

Shotgun classroom instruction, if applicable (refer to § 9.3) 1

Written firearms examination (refer to § 9.3)

Range qualification. No minimum hours required. Each person who carries or has immediate access to firearms in the performance of duty shall qualify with each type and calibre of firearm to which he has access.

Total hours do not include examination shotgun classroom instruction or range qualification. 8

§ 7.10. Compulsory minimum in-service training requirements.

A. Unarmed [~~guard~~ *security officer*] */armed* [~~guard~~ *security officer*] */courier* ..... *Hours*

Legal authority/regulations review 2

Job related training 2

[~~Written examination~~]

Total hours [~~excluding examination)~~] 4

B. Armored Car personnel ..... *Hours*

Statutory authorization/ [*state*] *regulations review* . 2

Armored car procedures 2

[~~Written examination~~]

Total hours [~~(excluding examination)~~] 4

C. Guard dog handler ..... *Hours*

Legal authority/regulations review 2

Job related training 2

Basic obedience retraining 2

Canine patrol techniques 2

[~~Written examination~~]

Total hours [~~(excluding examination)~~] 8

D. Private investigator [~~/private detective~~] ..... *Hours*

Legal authority/issues (civil and criminal)/regulations review 4

Investigative procedures 4

[~~Written examination~~]

Total hours [~~(excluding examination)~~] 8

E. Compliance agent ..... Hours

Industry overview and responsibilities, regulations review, business practices, ethical standards, records requirements, and other related issues. 4

§ 7.11. Firearms retraining.

A. All armed private security services business personnel must satisfactorily complete two hours of firearms classroom retraining, range training, and requalify as prescribed in §§ 9.2 and 9.3, if applicable, within each calendar year. Certified schools providing firearms retraining must meet the requirements of Part VIII of these regulations.

B. Each armed registrant who has complied with the initial firearms training requirement shall comply annually with firearms retraining prior to the expiration date of his registration.

C. Firearms (Handgun and Shotgun) Classroom Retraining 2

[~~Written Firearms Examination~~ ..... ~~2~~]

Range Qualification (no minimum hour required)

Total hours (excluding [~~examination and~~] range qualification) 2

§ 7.12. Instructor recertification. ..... Hours

A. Regulations review, legal issues, ethical standards, records requirements and other related topics 3

B. Techniques of instruction delivery 5

Including practical exercises

Total hours (excluding testing) 8

PART VIII.
PRIVATE SECURITY SERVICES TRAINING SCHOOLS.

§ 8.1. Application for certification; fee.

Each person seeking to establish a certified private security services training school shall file an application, provided by the department, which shall be accompanied by a nonrefundable fee of $500. The department may certify such schools for a period not to exceed 12 months.

§ 8.2. Certification requirements; designation of school director; school director duties and responsibilities; retention and replacement of school director.

A. Each person seeking to establish a certified private security services training school shall designate a school director. The school director shall be an individual, who is not designated as school director for any other certified private security services training school, and shall meet the following requirements:

1. Possess current certification as a private security instructor; and

2. Successful completion of compulsory minimum training requirements for each category of training for which school certification is requested.

B. The certified school director shall at all times comply with the following:

1. Ensure that the certified training school is in full compliance with the Code of Virginia and these regulations;

2. Ensure that all applications for session approval meet the requirements for mandated training;

3. Ensure that all instructors of the certified training school have been certified by the department and instruct in accordance with the current regulations;

4. Ensure the maintenance of training, employment and payroll records which document compliance with the Code of Virginia and these regulations.

C. 1. Each certified training school shall maintain an individual as school director who has met the requirements of these regulations and has been certified by the department.

2. Each training school shall notify the department in writing within 10 calendar days of the termination of employment of a certified school director.

3. Within 90 days of termination of the school's certified director, the school shall submit, on a form provided by the department, the name of a new school director who has met the requirements of these regulations.

§ 8.3. Certification authority.

The department, in accordance with § 9-182 of the Code of Virginia, may certify those schools, which on the basis of curricula, instructors and facilities provide training that meets the compulsory minimum training standards. A denial may be appealed in accordance with the procedures prescribed by the Administrative Process Act.

§ 8.4. Physical address required.

Each person applying to become a certified private security services training school shall provide the department with its physical address in Virginia at which records required to be maintained by the Code of Virginia and these regulations are kept and available for inspection

by the department. A post office box is not considered a physical address.

§ 8.5. Authority to inspect.

Each certified training school shall permit the department to inspect, review and copy those training, employment and payroll records which document compliance with the Code of Virginia and these regulations.

§ 8.6. Display of certificate.

The private security services training school certificate shall be prominently displayed for public inspection at all times.

§ 8.7. Change of ownership or entity.

Each certified training school shall report in writing to the department any change in its ownership or principals which does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change.

A new training school certification is required whenever there is any change in the ownership or manner of organization of the certified training school entity which results in the creation of a new legal entity.

§ 8.8. Change of name or address.

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

§ 8.9. Transfer of certification prohibited.

Each training school certification shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity.

§ 8.10. School expiration, renewal, reinstatement.

A. The department will mail a renewal application to the last known address of the certified school director. Failure of the certified school director to renew certification prior to the expiration date of the certification shall not be the responsibility of the department.

B. A private security training school not renewed on or before the expiration date of the certification shall become null and void. Operating a training school without valid certification is a violation of the Code of Virginia and these regulations.

C. All certifications granted to private security services training schools shall be valid for a period not to exceed 12 months.

D. Applications for renewal must be received 30 days prior to expiration. School renewal applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus nonrefundable reinstatement fees.

1. The department may renew the certification of a training school for a period not to exceed 12 months when the following are received by the department:

a. A properly completed renewal application; and

b. A nonrefundable renewal fee of $250.

2. The certified school director and each certified instructor listed on the school renewal application must have satisfactorily completed all applicable training requirements.

3. Each certified director, principal or certified instructor listed on the school renewal application shall be in good standing and free of disciplinary action in every jurisdiction where licensed or certified.

E. 1. A renewal application received by the department within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of $250 and nonrefundable reinstatement fee of $125.

2. No training school shall be renewed or reinstated when the renewal application and fee are received by the department after 180 days following the expiration date of the approval. After that date, the applicant shall meet then current initial school certification requirements.

3. The date on which the application and fee are received by the department shall determine whether the applicant is eligible for renewal or reinstatement or is required to apply for initial certification as a private security training school.

§ 8.11. Suspension and revocation.

The certified private security services training school director shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or these regulations. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include, but is not limited to, a letter of censure, fine, suspension, or revocation of the school's certification status or his certification as school director.

§ 8.12. Certified instructors required; qualifications; [~~subject matter specialists~~ ; criminal history records search; denial or renewal of certification; credit for hours] .

A. Instructors desiring to instruct in a certified training school shall submit an application for instructor certification. The applicant must provide documentation of previous work experience, instructor experience, training and education for those subjects in which certification is requested. The department will evaluate qualifications based upon the justification provided. In addition, all instructor applicants shall meet the following requirements and provide documentation thereof:

1. Have a minimum of three years management or supervisory experience with a private security services business or with any federal, military police, state, county or municipal law-enforcement agency, or in a related field; or have a minimum of one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which certification is requested, or in a related field;

2. Successful completion of an instructor development program, within the three years immediately preceding the date of the application, that meets or exceeds standards established by the department; or successful completion of an instructor development program longer than three years prior to the date of application, and has provided instruction during the three years immediately preceding, or has provided instruction in a related field at an institution of higher learning;

[3. Submit one set of two completed fingerprint cards on forms provided by the department; and]

[~~3.~~ 4.] Submit a properly completed instructor application and a nonrefundable application fee of [~~$50~~ $91] .

B. In addition to the instructor qualification requirements described in subsection A of this section, firearms instructors must have completed a firearms instructors school specifically designed for law-enforcement or private security personnel. The school must have been completed within the three years immediately preceding the date of the instructor application; or in the event that the school completion occurred prior to three years, the applicant shall have provided firearms instruction during the three years immediately preceding.

[C. Upon receipt of an initial application for instructor certification, the department shall submit the fingerprints of the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a national criminal records search to determine whether the applicant has a record of conviction. Applicants submitting unclassifiable fingerprint cards shall be required to submit new fingerprint cards along with a nonrefundable fee of $41. However, no such fee shall be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.

D. The department may deny certification to an instructor who has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage. Any plea of nolo contendere shall be considered a conviction for the purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

The department may deny certification to any instructor who has not maintained good standing in every jurisdiction where licensed or registered or has had his license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for certification in Virginia.]

[~~C.~~ E.] The department may renew the certification of an instructor for a period not to exceed 12 months when the following are received by the department:

1. A properly completed renewal application;

2. Documentation of satisfactory completion of applicable requirements; and

3. A nonrefundable renewal fee of $10.

[~~D. Individuals who qualify as subject matter specialists, including those listed below, may be certified to instruct by submitting:~~

~~1. A properly completed instructor application;~~

~~2. Documentation of subject matter credentials; and~~

~~3. A nonrefundable application fee of $50.~~

~~Those subject areas include, but are not limited to, legal matters, first aid, fire prevention and firefighting, use of chemical agents, hazardous materials, use of the baton.~~

~~E. Instructors may not certify themselves as having met the mandated training standards for classes in which they provide instruction.~~

~~F. Each person certified as an instructor shall complete the instructor recertification training requirements within each 36-month period of initial certification date.~~

F. The department may deny renewal of instructor certification for the same reason as it may refuse initial certification or discipline an instructor.

G. Instructors certified to teach mandatory training classes, except firearms training, may receive credit for hours towards in-service training requirements for classes in which they provide instruction, upon submission of proper documentation and department approval.

H. Each person certified as a private security instructor shall complete the instructor recertification requirements by December 31 of the third calendar year following initial certification and every third calendar year thereafter.

All private security instructors certified prior to June 30, 1994, must comply with this requirement by December 31, 1997.]

PART IX.
FIREARMS TRAINING.

§ 9.1. Firearms training requirements.

A. Private security services business personnel who apply for armed registration shall be required to meet the provisions of § 9.2 and, if applicable, § 9.3.

B. Every student must qualify with each type and calibre of firearm he will have access to while on duty. [~~*All handguns shall be capable of firing double-action.*~~]

§ 9.2. Handgun training.

A. The eight hours of classroom training will emphasize but not be limited to:

1. The proper care of the weapon;

2. Civil liability of the use of firearms;

3. Criminal liability of the use of firearms;

4. Deadly force;

5. Justifiable deadly force;

6. Range safety;

7. Practical firearms handling; and

8. Principles of marksmanship;

B. No minimum hours are required for range qualification. The purpose of the range qualification course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.

1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training.

2. Ammunition - 60 rounds - factory loaded semi-wadcutter or duty ammunition may be used for practice or range qualification or both.

3. Target - Silhouette (full-size B21, B21x or B-27) - Alternate targets may be utilized with prior approval by the department.

4. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

5. An approved firearms instructor must be on the range during all phases of firearms training. There shall be one firearms instructor or assistant per four shooters on the line.

6. Directional draw holsters only.

7. Scoring:

a. B21, B21x, B27 target - (use indicated K-value) 8,9,10 X rings - value 5 points, 7 ring-value 4 points, other hits on silhouette - value 3 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g. 225 ÷ 300 = .75 - 75%.

b. Q targets - any fired round striking the bottle area to include its marked border - value 5 points - any fired round striking outside the bottle area - value 3 points.

8. Course: Modified [~~*Double Action*~~] *Course for Handguns*

Target - Silhouette (B21, B21X B27)

60 rounds

[~~*Double action only*~~ *Double action, except for single action semi-automatic weapons*] .

Minimum qualifying score - 75%

Phase 1 - 3 yards, point shoulder position, 18 rounds:

Load 6 rounds and holster loaded weapon.

On command, draw and fire 2 rounds (3 seconds) repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 6 rounds with strong hand.

Unload, reload 6 rounds [; ~~*draw*~~] *and fire 6 rounds with weak hand (25 seconds).*

Phase 2 - 7 yards, point shoulder position, 24 rounds:

Load 6 rounds and holster loaded weapon.

On command, draw and fire 1 round (2 seconds), repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 2 rounds (3 seconds), repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds).

Phase 3 - 15 yards, 70 seconds, 18 rounds:

Load 6 rounds and holster loaded weapon.

On command, assume kneeling position, draw and fire 6 rounds with strong hand.

Assume standing position, unload, reload and fire 6 rounds from weak hand barricade position.

Unload, reload and fire 6 rounds from strong hand barricade position (70 seconds).

(Kneeling position may be fired using barricade position.)

§ 9.3. Shotgun training.

A. The one hour of classroom instruction will emphasize but not be limited to:

1. Safe and proper use and handling of shotgun;

2. Nomenclature; and

3. Positions and combat loading techniques.

B. No minimum hours required for range firing. The purpose of the range firing course is to provide practical shotgun training to those individuals who carry or have immediate access to a shotgun in the performance of their duties.

C. Ammunition must be of same type as carried in the performance of duty. Five rounds.

D. Scoring - 70% of available pellets must be within silhouette.

E. Course: Modified Shotgun Range

	Distance	Position	Rounds	Target	Time
Combat load & fire	15 Yds.	Standing/ Shoulder	3	B-27 Silhouette	20 sec.
Combat load & fire	25 Yds.	Kneeling/ Shoulder	2	B-27 Silhouette	15 sec.

F. A certified firearms instructor must be on the range during all phases of firearms range training. There shall be one certified firearms instructor or assistant per four shooters on the line.

§ 9.4. Firearms retraining.

A. All armed private security services business personnel must satisfactorily complete two hours of firearms classroom training, range training, and requalify as prescribed in §§ 9.2 and 9.3 if applicable, within each calendar year. Approved schools providing firearms retraining must meet the requirements of Part VIII of these regulations.

B. Each armed registrant who has complied with the initial firearms training requirement shall successfully complete firearms retraining annually prior to the expiration date of his registration.

PART X.
CERTIFIED PRIVATE SECURITY SERVICES TRAINING SCHOOLS ATTENDANCE AND ADMINISTRATIVE REQUIREMENTS.

Article 1.
Attendance and Administrative Requirements.

§ 10.1. Attendance.

The compulsory minimum training standards for initial and in-service training shall be met by attending and satisfactorily completing an approved private security services training session.

1. Private security services business personnel enrolled in an approved training session are required to be present for the entire period of each training class.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed.

3. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the certified school director. The certified school director shall be responsible for enforcement of all rules established to govern the conduct of students. If the certified school director considers a violation of the rules detrimental to the welfare of the students, the certified school director may expel the individua from the school. Notification of such action sha

immediately be reported to the employing firms and the department.

§ 10.2. Administrative requirements.

A. Each certified school director will be required to maintain a current file of approved sessions, attendance records, examination scores, firearms qualification scores, training completion rosters, and training completion forms for each student for three years from the date of the training session in which the individual student was enrolled.

B. Instruction shall be provided in no less than 50-minute classes.

C. Classroom and range training may not exceed eight hours per day. (This does not include time allotted for testing, lunch and breaks.)

D. Mandated training conducted without prior approval from the department is null and void.

E. Certified training schools will be subject to inspection and review by department staff. Certified training schools which conduct training sessions not located within Virginia may be required to pay the expenses of inspection and review.

Article 2.
Approved Training School Operation.

§ 10.3. Training session schedules.

Prior to conducting any mandated private security services training, approved training schools shall submit to the department a proposed training schedule on a form provided by or approved by the department to be received by the department no less than 10 days prior to the beginning of each training session.

1. Each proposed training session schedule shall be accompanied by a nonrefundable fee. The fee for each type of training session is set forth below:

a. Core subjects training session $10

b. Firearms training $10

c. Armored car subjects $10

d. Canine handler subjects $15

e. Private investigator [~~/private detective~~] $25

f. Firearms retraining $10

g. In-service training $10

2. The proposed training schedule shall include the date, time, location, subject and name of the approved instructor for each class to be conducted during the training session.

3. Any changes in an approved training session shall be reported to the department immediately. Written notification shall be received by the department within seven business days. An approved training session shall be conducted as scheduled.

4. The session curriculum, as approved by the department, must be adhered to and all subject matter must be presented in its entirety. The compulsory training standards constitute the minimum requirements; training directors may require additional hours of instruction, testing or evaluation procedures.

§ 10.4. Examination and testing.

A. A written examination shall be administered at the conclusion of each entry level training session. The examination shall include at least three questions for each 50 minutes of instruction of a mandated subject. The student must attain a minimum grade of 70% to satisfactorily complete the training session.

[~~B. A written examination, covering these regulations at a minimum, shall be administered at the conclusion of each in-service and firearms retraining session. The student must attain a minimum grade of 70% to satisfactorily complete the training session.~~]

[~~C.~~ B.] Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

[~~D.~~ C.] Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

[~~E.~~ D.] To successfully complete the firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

§ 10.5. Training completion forms.

On forms provided by the department, each training director shall issue an original training completion form to each student who satisfactorily completes a training session, no later than seven business days following the training completion date. A copy shall be retained on file with the certified training school for a minimum of three years.

§ 10.6. Training completion roster.

The school director shall submit a private security training roster affirming each student's successful completion of the session. This form shall be received by the department within seven business days of the

completion date of an approved training session. One copy shall be retained on file with the approved training school for a minimum of three years.

PART XI.
STANDARDS OF PRACTICE AND PROHIBITED ACTS.

Article 1.
Standards of Practice.

§ 11.1. Professional services.

In accordance with § 9-182 of the Code of Virginia, these regulations establish standards designed to secure the public safety and welfare against incompetent or unqualified persons engaging in private security services. It shall be the responsibility of the licensee, and its compliance agents, to provide private security services in a professional manner, adhering to ethical standards and sound business practices.

§ 11.2. Documentation required.

A. In the event a complaint against the licensee is received by the department, the compliance agent shall be required to furnish documentary evidence of the terms agreed to between licensee and client, which shall include at a minimum the scope of services and fees assessed for such services. This information is necessary for the department to assess the validity of the complaint.

B. Failure to produce such information may result in the imposition of sanctions as set forth in § 13.8 A of these regulations.

Article 2.
Violations and Prohibited Acts.

§ 11.3. Violations.

Each person subject to jurisdiction of these regulations, who violates any statute or regulation pertaining to private security services may be subject to sanctions imposed by the director regardless of criminal prosecution. The sanctions imposed may include, but shall not be limited to, a letter of censure, suspension, revocation, and fine not to exceed [~~$1,000~~ $2,500] for each violation.

§ 11.4. Prohibited acts.

It shall be unlawful for a person to engage in any of the following acts. Each of the acts listed below is cause for disciplinary action:

1. Violating or aiding and abetting others in violating the provisions of Article 2.1 (§ 9-183.1 et seq.) of Chapter 27 of Title 9 of the Code of Virginia or these regulations.

2. Having committed any act or omission which resulted in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

3. Having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury, or property damage, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of these regulations. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

4. Failing to inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage.

5. Obtaining a license, license renewal, registration, registration renewal, training certification, training certification renewal, or certification to act as compliance agent for a licensee, a training school, school director, or instructor, through any fraud or misrepresentation.

6. Failing or refusing to produce to the department, during regular business hours, for inspection or copying any document or record in the compliance agent's or the licensed firm's possession which is pertinent to the records required to be kept by the Code of Virginia or by these regulations.

7. Failing to inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

8. Conducting a private security services business or acting as a registrant or compliance agent in such a manner as to endanger the public health, safety and welfare.

9. Engaging in [~~improper,~~] fraudulent [;] or dishonest conduct.

10. Falsifying, or aiding and abetting others in falsifying, training records for the purpose of obtaining a license, registration, unarmed [~~guard~~ security officer] training certification, or certification as a compliance agent, training school, school director or instructor.

11. Representing as one's own a license issued to another private security services business or a

registration issued to another individual, or representing oneself as a certified compliance agent of a licensee, training school, school director or instructor.

12. Employing individuals who do not possess a valid registration issued by the department showing the registration categories required to perform one's duties.

13. Utilizing a person as an armed [~~guard~~ security officer] who has not successfully completed the compulsory minimum standards for armed [~~guards~~ security officers] or who does not have a valid firearms certification.

14. Performing any unlawful [; or] negligent [~~or improper~~] act resulting in loss, injury or death to any person.

15. Wearing while on duty, the law-enforcement style or military style uniform of a private security licensee:

a. Which does not have at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Having a patch or other writing containing the word "police" or any other words suggesting a law-enforcement officer, or "officer," unless used in conjunction with the word "security"; or resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction.

16. Using a vehicle in the conduct of a private security services business which uses or displays a flashing red, blue or amber light not specifically authorized by the Code of Virginia.

17. Using or displaying the state seal of Virginia as a part of any licensed firm's logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement.

18. Displaying of the uniform, badge or other insignia by employees of licensed firms while not on duty.

19. During the course of any private investigation, providing information obtained by any licensed firm and its employees to any person other than the client who employed the licensee to obtain that information, without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, or from the department, shall not constitute a violation of these regulations. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of these regulations.

20. The failure of a licensee's approved compliance agent to at all times comply with the following:

a. Ensure that the licensed firm is at all times in full compliance with the Code of Virginia and these regulations;

b. Ensure that the documentary evidence concerning unarmed [~~guards~~ security officers] required by § 9-183.3 D of the Code of Virginia is maintained;

c. Ensure that the licensed firm does not utilize or otherwise employ any person as an unarmed [~~guard~~ security officer] in excess of [~~120~~ 90] days prior to the completion of the compulsory minimum training standards for unarmed [~~guard~~ security officer] ; and

d. Maintain VSP Forms 167, training, employment and payroll records which document the licensed firm's compliance with the Code of Virginia and these regulations.

[~~22.~~ 21.] Failure of the certified school director or certified instructor to comply with the following:

a. Conduct training in compliance with the approved training schedule;

b. Utilize only certified training instructors;

c. Provide only accurate and current instruction and information to students;

d. Maintain and file with the department all records required by the Code of Virginia and these regulations; and

e. Ensure that the certified training school and each approved session are held in compliance with the Code of Virginia and these regulations.

PART XII.
AUTHORITY OF THE DEPARTMENT.

§ 12.1. Authority of the director.

A. In addition to the authority conferred by law, the director and his appointed agents are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of these regulations. The

director, or agents appointed by him, shall be sworn to enforce the statutes and regulations pertaining to private security services businesses and private security services business personnel and shall have the authority to serve and execute any warrant, paper or process issued by any court or magistrate within jurisdiction of the department.

B. Further, in addition to the authority granted in § 9-6.14:13 of the Code of Virginia to issue subpoenas, the director, or a designated subordinate, shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the department.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by these regulations but do not hold a valid license, certificate or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director may summarily suspend a license under these regulations without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee or registrant would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm, personal injury or loss.

PART XIII.
ADMINISTRATIVE REVIEW.

§ 13.1. Authority.

Pursuant to the authority conferred in § 9-182 B 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed herein, the department is empowered to receive, review, investigate and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

§ 13.2. Complaints; complaint requirements; source of complaint; telephonic complaint.

A. Complaint requirements:

1. [~~Shall be in writing; and~~ May be oral or in writing; and]

2. Must allege a violation of the law or these regulations relating to private security services.

B. Any aggrieved or interested person may file a complaint against any individual, person, firm or licensed firm, school or certified school whose conduct and activities are regulated by the board. Additionally, the department may initiate proceedings to adjudicate an alleged violation as a result of its own audit, inspection, or investigation.

C. The department may accept and investigate telephonic complaints regarding activities which constitute a life-threatening situation, or have resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm or personal injury.

§ 13.3. Adjudication of complaints.

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact finding conference or formal hearing.

§ 13.4. Informal fact finding conference.

A. The purpose of an informal fact finding conference is to resolve allegations through informal consultation and negotiation. Informal fact finding conferences shall be conducted in accordance with § 9-6.14:11 of the Code of Virginia.

B. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact finding decision was served by mail, three days shall be added to that period.

§ 13.5. Formal hearing.

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 9-6.14:2 of the Administrative Process Act. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 9-6.14:12 of the Code of Virginia wherein a sanction is imposed to fine, or to suspend, revoke or deny issuance or renewal of any license, registration, certification or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such license, registration, certification or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost

shall be limited to (i) the reasonable hourly rate for the hearing officer; and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

§ 13.6. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention: Director, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

§ 13.7. Court review; appeal of final agency order.

A. The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia.

B. Notification shall be given to the attention Director, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

§ 13.8. Disciplinary action; sanctions; publication of record.

A. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation, or in noncompliance, of these regulations:

1. Letter of reprimand or censure;

2. Suspension of license, registration, certification, or approval granted, for any period of time;

3. Revocation;

4. Refusal to issue, renew or reinstate a license, registration, certification or approval;

5. Fine not to exceed [~~$1,000~~ $2,500] per violation.

B. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons, licensees, firms, registrants, training schools, school directors, compliance agents and licensed firms whose conduct and activities are subject to these regulations and have been sanctioned or denied licensure, registration, certification or approval.

NOTICE: The forms used in administering the Regulations Relating to Private Security Services 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 Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Initial License Application, Private Security Services Business (Form PSS BL 7-193)
Supplemental Private Security Services Business License Application (Form PSS BL 7-193a)
Private Security Services Bond (Form PSS BL 7-393)
Certificate of Insurance (Form PSS BL 7-293)
Irrevocable Consent for Service (Form PSS BL 7-493)
Application for Initial Private Security Registration (Form PSS ICR 1-793)
Renewal Application for Private Security Registration (Form PSS ICR 2-793)
Unarmed Guard Training Certification Application (Form PSS ICR 3-793)
Private Security Services Business, Personnel Training School Application for Approval (Form PSS TS 7-A93)
Renewal Application, Approved Private Security Services Training School (Form PSS TS 7-F93)
Private Security Instructor Approval Application (Form PSS TS 7-G93)
Application to Conduct Private Security Services, Session Training Schedule (Form PSS TS 7-C93)
Private Security - Training Completion Roster (Form PSS 7-E93)
Training Completion Form (Form PSS TS 7-D93)
Application for Duplicate/Replacement Photo Identification (Form PSS ICR S-793)
Additional Category Application (Form PSS ICR 8-793)

VA.R. Doc. No. R94-1005; Filed May 25, 1994, 9:51 a.m.

BOARD OF DENTISTRY

Title of Regulation: **VR 255-01-1. Virginia Board of Dentistry Regulations.**

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

Effective Date: July 13, 1994.

Summary:

The amendments set forth requirements for continuing education for dentists and dental hygienists, allow licensure by endorsement for dentists, allow specialists to advertise in a board-approved manner, provide for an administrative procedure for reinstatement of license, establish administrative fees for licensure by credentials and licensure reinstatement to cover administrative costs, and amend regulations for clarity and simplicity.

In addition, the board deleted § 1.2, Public Participation Guidelines, because a separate regulation for Public Participation Guidelines (VR 255-01-2) is currently in effect.

In addition, the board responded to comment received during its review of regulations requesting clarification and updating of some requirements to current practice and educational standards.

In response to public comment on proposed regulations, the board adopted the following changes:

1. § 1.5 C 11 was amended to allow the board to approve continuing education programs in addition to those offered by providers recognized by the American Dental Association; and

2. § 1.5 G was amended to reduce the time required for the retention of continuing education documentation from five to four years and to require hygienists to show evidence of a post course exam. Changes were made to comply with requirements of § 54.1-2729.

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 Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9904. There may be a charge for copies.

VR 255-01-1. Virginia Board of Dentistry Regulations

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Approved schools" means those dental schools, colleges, departments of universities or colleges or schools of dental hygiene currently accredited by the Commission on Dental Accreditation of the American Dental Association, which is hereby incorporated by reference.

"Competent instructor" means any person appointed to the faculty of a dental school, college or department or a university or a college who holds a license or teacher's license to practice dentistry or dental hygiene in the Commonwealth.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under these regulations but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental hygiene student" means any person currently enrolled and attending an approved school/program of dental hygiene. No person shall be deemed to be a dental hygiene student who has not begun the first year of enrollment in the school; nor a person who is not attending the regularly scheduled sessions of the school in which he is enrolled.

"Dental student" means any person currently enrolled and attending an approved school of dentistry but shall not include persons enrolled in schools/programs of dental hygiene. No person shall be deemed to be a dental student who has not begun the first year of enrollment in school; nor a person who is not attending the regularly scheduled sessions of the school in which he is enrolled.

"Diagnosis" means an opinion of findings in an examination.

"Direction" means the presence of the dentist for the evaluation, observation, advice, and control over the performance of dental services.

"Examination of patient" means a study of all the structures of the oral cavity, including the recording of the conditions of all such structures and an appropriate history thereof. As a minimum, such study shall include charting of caries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.

"General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or its contiguous structures generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

"Monitoring general anesthesia and conscious sedation" includes the following: recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist during the conduct of these procedures and after the dentist has induced a patient and established a maintenance level.

"Monitoring nitrous oxide oxygen inhalation analgesia" means making the proper adjustments of nitrous oxide machines at the request of the dentist during the administration of the sedation and observing the patient's vital signs.

"Nitrous oxide oxygen inhalation analgesia" means the utilization of nitrous oxide and oxygen to produce a state of reduced sensibility to pain designating particularly the relief of pain without the loss of consciousness.

"Radiographs" means intraoral and extraoral x-rays of the hard and soft oral structures to be used for purposes of diagnosis.

"Recognized governmental clinic" means any clinic operated or funded by any agency of state or local government which provides dental services to the public, the dental services of which shall be provided by a licensed dentist or by persons who may be authorized herein to provide dental services under the direction of a dentist.

~~§ 1.2. Public participation guidelines.~~

~~A. Mailing list.~~

~~The Virginia State Board of Dentistry will maintain a list of persons and organizations who will be mailed the following documents as they become available:~~

~~1. "Notice of intent" to promulgate regulations.~~

~~2. "Notice of public hearing" or "informational proceeding," the subject of which is a proposed or existing regulation.~~

~~3. Final regulation adopted.~~

~~B. Being placed on list and deletion.~~

~~Any person wishing to be placed on the mailing list may have his or her name added by writing the board. In addition, the agency or board may, in its discretion, add to the list any person, organization, or publication whose inclusion it believes will further the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Individuals and organizations will be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.~~

~~C. Notice of intent.~~

~~At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Administrative Process Act, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations.~~

~~D. Informational proceedings or public hearings for existing rules.~~

~~At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and the cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations. Such proceeding may be held separately from or in conjunction with other informational proceedings.~~

~~E. Petition of rulemaking.~~

~~Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.~~

~~F. Notice of formulation and adoption.~~

~~When a proposed regulation is formulated at any meeting of the board or of a board subcommittee, or when any regulation is adopted by the board, the subject~~

~~matter shall be transmitted to The Registrar of Regulations for inclusion in The Virginia Register of Regulations.~~

~~G. Advisory committees.~~

~~The board may appoint advisory committees as it deems necessary to provide for adequate citizen participation in the formation, promulgation, adoption and review of regulations.~~

§ ~~1.3.~~ *1.2.* License renewal and reinstatement.

The board shall forward a renewal notice to each licensee at the address of record (§ 4.2 B) prior to the expiration of the license. Failure to receive such notice shall not relieve the licensee of the responsibility to renew the license.

A. Dental renewal fees.

Every person licensed to practice dentistry shall, on or before March 31, renew their license to practice dentistry and pay an annual renewal fee of $65 except as otherwise provided in § ~~1.4~~ *1.3* of these regulations.

B. Dental hygiene renewal fees.

Every person licensed to practice dental hygiene by this board shall, on or before March 31, renew their license to practice dental hygiene and pay an annual renewal fee of $25 except as otherwise provided in § ~~1.4~~ *1.3* of these regulations.

C. Penalty fees.

Any person who does not return the completed form and fee by March 31 shall be required to pay an additional $35 penalty fee. The board shall renew a license when the renewal form is received by the following April 30, along with the completed form, the annual registration fee, and the penalty fee.

D. Reinstatement fees and procedures.

The license of any person who does not return the completed renewal form and fees by April 30 shall automatically expire and become invalid and their practice of dentistry/dental hygiene shall be illegal. Upon such expiration, the board shall immediately notify the affected person of the expiration and the reinstatement procedures. Any person whose license has expired who wishes to reinstate such license shall submit to the board a reinstatement form, the application fee, the penalty fee, renewal fee and an assessment of $50 per month for each month or part of a month the individual has practiced in Virginia without a valid license. ~~The board may reinstate the license of an applicant who satisfactorily completes the board-approved examinations unless the applicant demonstrates that he has maintained continuous ethical, legal and clinical practice during the period of licensure expiration or demonstrates that the lapse was due to factors beyond the applicant's control or was other than voluntary.~~ *The executive director shall reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and § 4.3 of these regulations to deny said reinstatement, and that the applicant has paid all unpaid renewal fees and assessments.*

E. Reinstatement of a license previously revoked or indefinitely suspended.

Any person whose license has been revoked shall submit to the board for its approval a reinstatement form and an application fee of $750. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement form and an application fee of $300.

§ ~~1.4.~~ *1.3.* Other fees.

A. Dental licensure application fees.

The application for a dental license shall be accompanied by a check or money order for $220, which includes a $155 application fee and a $65 initial licensure fee.

B. Dental hygiene licensure application fees.

The application for a dental hygiene license shall be accompanied by a check or money order for $155, which includes a $130 application fee and a $25 initial licensure fee.

C. Duplicate wall certificate.

Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of $15. A duplicate certificate may be issued for any of the following reasons: replacing certificate that has been lost, stolen, misplaced, destroyed or is otherwise irretrievable; recording the new name of a registrant whose name has been changed by court order or by marriage; or for multiple offices.

D. Duplicate license.

Licensees desiring duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of $10. A duplicate license may be issued for any of the following reasons: maintaining more than one office (notarized photocopy may be used); replacing license that has been lost, stolen, misplaced, destroyed or is otherwise irretrievable; and recording the new name of a licensee whose name has been changed by court order or by marriage.

E. Licensure certification.

Licensees requesting endorsement or certification by this board shall pay a fee of $25 for each endorsement or certification.

F. Restricted license.

Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $100.

G. Teacher's license.

License to teach dentistry and dental hygiene issued in accordance with §§ 54.1-2713 and 54.1-2725 of the Code of Virginia shall be at a fee of $220 and $155, respectively. The renewal fee shall be $65 and $25, respectively.

H. Temporary permit.

Temporary permit for dentists and dental hygienists issued in accordance with §§ 54.1-2715 and 54.1-2726 of the Code of Virginia shall be at a fee of $220 and $155, respectively. The renewal fee shall be $65 and $25, respectively.

I. Radiology safety examination.

Each examination administered in accordance with § 4.5(A)(11) of these regulations shall be at a fee of $25.

J. Jurisprudence examination.

Each examination administered by the board outside the scheduled clinical examination site in accordance with §§ 2.2 A 3 and 2.2 B 3 shall be at a fee of $25.

K. Full-time faculty license.

Full-time faculty license for dentists issued in accordance with § 54.1-2714.1 of the Code of Virginia, shall be at a fee of $220. The renewal fee shall be $65.

L. Endorsement license.

License by endorsement issued in accordance with § 2.3 for dental hygienists shall be at a fee of $200 ($175 application and $25 initial licensure fee). The renewal fee shall be $25. *License by endorsement issued in accordance with § 2.3 for dentists shall be at a fee of $565 ($500 application fee and $65 initial licensure fee).*

M. Schedule VI topical medicinal agents certification.

Certifications issued in accordance with § 5.4 A 1 shall be at a fee of $15.

§ ~~1.5.~~ *1.4.* Refunds.

No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

§ 1.5. Requirements for continuing education [*(CE)*] .

A. After April 1, 1995, a dentist shall be required to have completed a minimum of 15 hours and a dental hygienist shall be required to have completed a minimum of 15 hours of [*approved*] *continuing* [~~*dental*~~] *education in* [~~*an approved*~~ *a*] *program for each annual renewal of licensure.*

Continuing education hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in § 1.6 B 1 and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Association specialty organizations, their constituent and component/branch associations;

4. American Medical Association and National Medical Association, their specialty organizations, constituent and component/branch associations;

5. Academy of General Dentistry, its constituent and component/branch associations;

6. Community colleges with an [~~*approved*~~ *accredited*] *dental hygiene program if offered under the auspices of the dental hygienist program;*

7. A college, university or hospital service which is accredited by an accrediting agency approved by the U.S. Office of Education;

8. The American Heart Association and the American Cancer Society;

9. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education; or

10. [*State or*] *federal government agencies (i.e., military dental division, Veteran's Administration, etc.)* [*: ; or*

11. Or any other board approved programs.]

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of [~~*five*~~ *four*] *years following renewal.* [*Dental hygiene documentation shall evidence satisfactory completion of a post course examination.*]

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active.

I. Continuing education hours required by disciplinary order shall not be used to satisfy the continuing education requirement for license renewal.

J. Penalty for noncompliance of continuing education for dentists and dental hygienists is $1,000 per violation.

PART II.
ENTRY AND LICENSURE REQUIREMENTS.

§ 2.1. Education.

A. Dental licensure.

An applicant for dental licensure shall be a graduate and a holder of a diploma from an accredited or approved dental school recognized by the Commission on Dental Accreditation of the American Dental Association, be of good moral character, and provide proof that the individual has not committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia.

B. Dental hygiene licensure.

An applicant for dental hygiene licensure shall have graduated from or be issued a certificate by an accredited school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association, be of good moral character, and provide proof that the individual has not committed any act which would constitute a violation of § 54.1-2728 of the Code of Virginia.

§ 2.2. Licensure examinations.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. For the purpose of § 54.1-2709 of the Code of Virginia, all persons desiring to practice dentistry in the Commonwealth of Virginia will be required to satisfactorily pass the complete board-approved examinations in dentistry as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection A of § 2.3 of these regulations. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board ~~will~~ *may* be required to retake the examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. For the purpose of § 54.1-2722 of the Code of Virginia, all persons desiring to practice dental hygiene in the Commonwealth of Virginia shall be required to successfully complete the board-approved examinations in dental hygiene as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection B of § 2.3 of these regulations. Applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board ~~will~~ *may* be required to retake the board-approved examinations unless they demonstrate that they have maintained continuous clinical, ethical

and legal practice since passing the board-approved examinations.

C. All applicants for dental/dental hygiene licensure by examination shall be required to pass an examination on the Virginia dental hygiene laws and the regulations of this board.

~~§ 2.3. Reciprocal licensure for dentists and licensure by endorsement for dental hygienists.~~

~~A. Dental reciprocal licensure.~~

~~An applicant for dental reciprocal licensure must:~~

~~1. Be a graduate of an accredited dental school recognized by the Commission on Dental Accreditation of the American Dental Association, and~~

~~2. Be currently licensed and engaged in the active, legal and ethical practice of dentistry in a state having licensure requirements comparable to those established by the Code of Virginia with which the Virginia Board of Dentistry has established reciprocity.~~

§ 2.3. Licensure by endorsement for dentists and dental hygienists.

A. [~~*Licensure by endorsement for the practice of dentistry.*~~ *An applicant for dental licensure by endorsement shall:*]

[~~*No applicant for licensure to practice dentistry by endorsement will be considered for licensure unless the applicant has met all of the following requirements:*~~]

1. [~~*Is*~~ *Be*] *a graduate and holder of a diploma from an accredited or approved dental school recognized by the Commission on Dental Accreditation of the American Dental Association;*

2. [~~*Has*~~ *Have*] *successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;*

3. [~~*Holds*~~ *Hold*] *a current, unrestricted license to practice dentistry in another state, territory, District of Columbia or possession of the United States and has continuous clinical, ethical, and legal practice for five out of the past six years immediately preceding application for licensure. Active patient care in armed forces dental corps, state or federal agency, and intern or residency programs may substitute for required clinical practice;*

4. [~~*Is*~~ *Be*] *certified to be in good standing from each state in which he is currently licensed or has ever held a license;*

5. [~~*Has*~~ *Have*] *not failed any clinical examination accepted by the board, pursuant to § 54.1-2709 of the Code of Virginia, within the last five years;*

6. [~~*Is*~~ *Be*] *of good moral character;*

7. [~~*Has*~~ *Have*] *successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board;*

8. [~~*Has passed*~~ *Pass*] *an examination on the laws and the regulations governing the practice of dentistry in Virginia; and*

9. [~~*Has*~~ *Have*] *not committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia and is not the respondent in any pending or unresolved board action or malpractice claim.*

B. Dental hygiene *endorsement* .

An applicant for dental hygiene endorsement licensure shall:

1. Be a graduate or be issued a certificate from an accredited dental hygiene school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association;

2. Be currently licensed to practice dental hygiene in another state, territory, District of Columbia or possession of the U.S., and have continuous clinical, ethical and legal practice for two out of the past four years immediately preceding application for licensure. Active patient care in armed forces dental corps, state ~~and~~ *or* federal *agency* , and intern ~~and~~ *or* residency programs, may substitute for required clinical practice;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;

4. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;

5. Not have failed the clinical examination accepted by the board, pursuant to § 54.1-2722 of the Code of Virginia, within the last five years;

6. Be of good moral character;

7. Provide proof of not having committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;

8. Successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board; and

9. Pass an examination on the laws and the

regulations governing the practice of dentistry in Virginia.

§ 2.4. Temporary permit, teacher's license and full-time faculty license.

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia until the release of grades of the next licensure examination given in this Commonwealth, after the issuance of the temporary permit.

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the first examination given immediately after the issuance of the permit. Such permit reissuance shall expire seven days after the release of grades of the next examination given.

C. A full-time faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia, who is certified by the Dean of a dental school in the Commonwealth and who is serving full time on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth. A full-time faculty license shall remain valid only while the license holder is serving full time on the faculty of a dental school in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment. The Dean of the dental school shall notify the board within five working days of such termination of full-time employment.

D. A temporary permit issued pursuant to § 54.1-2715, a teacher's license issued pursuant to §§ 54.1-2713, 54.1-2714 and 54.1-2725 and full-time faculty license issued pursuant to § 54.1-2714.1 of the Code of Virginia may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act, acts or actions indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a full-time faculty license or temporary permit shall be required to pass an examination on the laws and the regulations governing the practice of dentistry in Virginia.

§ 2.5. *Other application requirements.*

All applications for any license or permit issued by the board shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate; and

2. An original grade card issued by the Joint Commission on National Dental Examinations.

PART III.
GENERAL ANESTHESIA AND CONSCIOUS SEDATION.

§ 3.1. Requirements to administer general anesthesia.

A. Educational requirements.

A dentist may employ or use general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in § 3.1 A 1 or 2. The foregoing shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" as currently published by the American Dental Association; or

2. [~~Is board certified~~] ~~or~~ [; ~~board eligible ; or educationally qualified~~ *Completion of an American Dental Association approved residency*] in any dental specialty which incorporates into its curriculum the standards of teaching comparable to those set forth in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry ; " *as currently published by the American Dental Association.*

B. Exemptions.

A dentist who has not meet the requirements specified in subsection A of this section may treat patients under general anesthesia in his practice if a qualified anesthesiologist, or a dentist who fulfills the requirements specified in subsection A of this section is present and is responsible for the administration of the anesthetic. If a dentist fulfills requirements himself to use general anesthesia and conscious sedation, he may employ the services of a certified nurse anesthetist.

§ 3.2. Conscious sedation; intravenous and intramuscular.

A. Automatic qualification.

Dentists qualified to administer general anesthesia may administer conscious sedation.

B. Educational requirements.

A dentist may administer conscious sedation upon completion of training in conformity with requirements for this treatment modality as published by the American Dental Association in the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," while enrolled at an approved dental school or while enrolled in a post-doctoral university or teaching hospital program.

§ 3.3. General information.

A. Emergency equipment and techniques.

A dentist who administers general anesthesia and conscious sedation *(excluding nitrous oxide)* shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in the dental facility:

1. Full face mask for children or adults, or both;

2. Oral and nasopharyngeal airways;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;

5. Source of delivery of oxygen under controlled pressure; and

6. Mechanical (hand) respiratory bag.

B. Posting requirements.

Any dentist who utilizes general anesthesia or conscious sedation shall post in each facility the certificate of education required under §§ 3.1 A and 3.2 B or the self-certification certificate issued by the board.

C. Other.

1. The team for general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient, and a third person to assist the operating dentist.

2. Person in charge of the anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

D. Scope of regulation.

Part III shall not apply to administration of General Anesthesia and Conscious Sedation in hospitals and Surgi-centers.

§ 3.4. Report of adverse reactions.

A written report shall be submitted to the board by the treating dentist within 30 days following any mortality or morbidity that occurs in the facility or during the first 24 hours immediately following the patient's departure from the facility following and directly resulting from the administration of general anesthesia, conscious sedation, or nitrous oxide oxygen inhalation analgesia.

PART IV.
RECORD KEEPING AND REPORTING.

§ 4.1. Records.

A. Laboratory work orders.

Written work order forms and subwork order forms to employ or engage the services of any person, firm or corporation to construct or reproduce or repair, extraorally, prosthetic dentures, bridges or other replacements for a part of a tooth or teeth as required by § 54.1-2719 of the Code of Virginia shall include as a minimum the following information:

1. Patient name or case number, and date.

2. The signature, license number and address of the dentist.

B. Patient records.

A dentist shall maintain patient records for not less than five years from the most recent date of service for purposes or review by the board to include the following:

1. Patient's name and date of treatment;

2. Updated health history;

3. Diagnosis and treatment rendered;

4. List of drugs prescribed, administered, dispensed and the quantity;

5. Radiographs;

6. Patient financial records ~~and all insurance claim forms~~ ; and

7. Name of dentist and dental hygienist providing service.

§ 4.2. Reporting.

A. Dental students as hygienists.

Prior to utilizing the services of a senior dental student as a dental hygienist as provided in § 54.1-2712 of the Code of Virginia a dentist shall supply the board with the name and address of the student, the school in which the

senior student is enrolled, the hours during which the student is expected to be employed as a hygienist, the expected period of employment (June and July, only) and verification that the employing dentist holds faculty appointment.

B. Current business addresses.

Each licensee shall furnish the board at all times with his current primary Virginia business address (no P.O. Box accepted). If not practicing in Virginia, the primary out-of-state business address must be furnished (no P.O. Box accepted). Each dental hygienist shall furnish current resident address (no P.O. Box accepted). All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. All changes of address shall be furnished to the board in writing within 30 days of such changes.

§ 4.3. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services.

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use.

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene.

5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist except as otherwise authorized by these regulations.

6. Certifying completion of a dental procedure that has not actually been completed.

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health.

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with § 4.5 A 11 of these regulations.

§ 4.4. Advertising.

A. Practice limitation.

A general dentist who limits his practice shall state in conjunction with his name that he is a general dentist providing only certain services, i.e., orthodontic services.

B. Fee disclosures.

Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts.

Discount offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising.

A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services.

The purpose of this subsection is to delineate those routine dental services which may be advertised pursuant to § 54.1-2706(7) of the Code of Virginia and subsection F of § 4.4 of these regulations. The definitions as set out in ~~Regulation I~~ *§ 1.1 of these regulations* are intended to set forth a minimum standard as to what constitutes such services for advertising purposes in order to allow the public to accurately compare the fees charged for a given service and to preclude potentially misleading advertisement of fees for a given service which may be delivered on a superficial or minimum basis. Advertising of fees pursuant to ~~of~~ § 4.4 F 3 of these regulations is limited to the following routine dental services:

1. "Examination." A study of all the structures of the oral cavity, including the recording of the condition of all such structures and an appropriate history

thereof. As a minimum, such study shall include charting of caries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.

2. "Diagnosis." An opinion of findings in an examination.

3. "Treatment planning." A written statement of treatment recommendations following an examination and diagnosis. This statement shall include a written itemized treatment recommendation and written itemized fee statement.

4. "Radiographs." Shall document type and quantity. (See definitions).

5. "Complete or partial dentures and crowns." Any advertisement shall include full disclosure of all related fees and procedures.

6. "Prophylaxis." The removal of calculus, accretions and stains from exposed surfaces of the teeth and from the gingival sulcus.

7. "Simple extractions." A service for the removal of nonimpacted teeth, including a full disclosure of all related fees and procedures.

8. Other procedures which are determined by the board to be routine dental services are those services set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in the Journal of the American Dental Association (JADA), as amended, which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive or misleading advertising within the meaning of § 54.1-2706(7) of the Code of Virginia.

1. Publishing an advertisement which contains a material misrepresentation or omission of facts.

2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

3. Publishing an advertisement which fails to include the information and disclaimers required by § 4.4 of these regulations.

4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty such as: (i) endodontist; (ii) oral or maxillofacial surgeon; (iii) oral pathologist; (iv) orthodontist; (v) pediatric dentist; (vi) periodontist; (vii) prosthodontist; (viii) public health or any derivation of these specialties unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental Accreditation and the Council on Dental Education of the American Dental Association in effect on January 1, 1988, or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board.

A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered [to be practicing] general dentistry.

G. Signage.

Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§ 54.1-2718 and 54.1-2720 of the Code of Virginia are complied with.

§ 4.5. Nondelegable duties.

A. Nondentists.

The following duties shall not be delegated to a nondentist:

1. Final diagnosis and treatment planning.

2. Performing surgical or cutting procedures on hard or soft tissue.

3. Prescribing drugs, medicaments and work authorizations.

4. Adjusting fixed or removable appliances or restorations in the oral cavity.

5. Making occlusal adjustments in the oral cavity.

6. Performing pulp capping and pulpotomy procedures.

7. Administering and monitoring local or general anesthetics, conscious sedation and administering nitrous oxide oxygen inhalation analgesia, except as provided for in § 54.1-2701 of the Code of Virginia and § 5.4 A 17 of these regulations.

8. Condensing and carving amalgam restorations.

9. Placing and contouring silicate cement and composite resin restorations.

10. Placement and fitting of orthodontic arch ~~wire and~~

~~making~~ ~~ligature~~ ~~adjustments~~ ~~creating~~ ~~active~~ ~~pressure~~ ~~on~~ ~~the~~ ~~teeth~~ *wires* .

11. No person, not otherwise licensed by the board, shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, or (ii) been certified by the American Society of Radiological Technicians, (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board, or (iv) passed the board's examination in radiation safety and hygiene followed by on-the-job training. Any individual not able to successfully complete the board's examination after two attempts may be certified only by completing clause (i), (ii) or (iii) of this provision. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

12. Taking impressions for any working model except as provided in § 5.3 A 2 of these regulations.

PART V.
DIRECTION AND UTILIZATION OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS.

§ 5.1. Employment of dental hygienists.

No dentist shall direct more than two dental hygienists at one and the same time.

§ 5.2. Required direction.

In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with these regulations and the Code of Virginia.

Dental hygienists and assistants shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency and under the direction and control of the employing dentist or the dentist in charge, or the dentist in charge or control of the governmental agency. The dentist shall be present and evaluate the patient during the time the patient is in the facility. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

§ 5.3. Dental hygienists.

A. The following duties may be delegated to dental hygienists under direction:

1. Scaling, root planing and polishing natural and restored teeth using hand instruments, rotary instruments, prophy-jets and ultrasonic devices.

2. Taking of working impressions for construction of athletic and fluoride guards.

3. Performing an original or clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

4. Subgingival irrigation or application of Schedule VI medicinal agents.

§ 5.4. Dental hygienists and dental assistants.

A. Only the following duties may be delegated to dental hygienists and dental assistants under direction:

1. No person not otherwise licensed by the board shall apply Schedule VI topical medicinal agents, including topical fluoride or desensitizing agents (aerosol topical anesthesia excluded), unless the individual has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association and been certified by the board, or (ii) satisfactorily completed a training program approved by the board and been certified by the board. This training program may be implemented by dentists and dental hygientists who are currently licensed to practice dentistry and dental hygiene in Virginia, and by certified dental assistants who are currently certified by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

2. Acid etching in those instances where the procedure is reversible.

3. Application of sealants.

4. Serving as a chairside assistant aiding the dentist's treatment by concurrently performing supportive procedures for the dentist, including drawing up and compounding medications for administration by the dentist. The foregoing shall not prohibit the dentist from delegating to another licensed health care professional duties within the scope of their respective practice.

5. Placing and removing matrixes for restorations.

6. Placing and removing rubber dam.

7. Placing and removing periodontal packs.

8. Polishing natural and restored teeth by means of a rotary rubber cup or brush and appropriate polishing agent.

9. Holding and removing impression material for working models after placement in the patient's mouth by the dentist.

10. Taking nonworking impressions for diagnostic study models.

11. Placing of amalgam in prepared cavities with the carrier to be condensed and carved by the dentist.

12. Placing and removing elastic orthodontic separators.

13. Checking for loose orthodontic bands.

14. Removing arch wires and ligature ties.

15. Placing ligatures to tie in orthodontic arch wire that has been fitted and placed by the dentist.

16. Selecting and prefitting of orthodontic bands for cementation by the dentist.

17. Monitoring of nitrous oxide oxygen inhalation analgesia.

18. Placing and exposing dental x-ray film. (No person who is not otherwise licensed by the board shall place or expose dental x-ray film unless the requirements of subsection A, paragraph 11, of § 4.5 of these regulations have been fulfilled.)

19. Removing socket dressings.

20. Instructing patients in placement and removal of retainers and appliances after they have been completely fitted and adjusted in the patient's mouth by the dentist.

21. Removing sutures.

22. Removing supragingival cement on crowns, bands, and restorations.

Any procedure not listed above is prohibited.

§ 5.5. What does not constitute practice.

A. Oral health education and preliminary dental screenings in any setting are not considered the practice of dental hygiene and dentistry.

B. Recording a patient's pulse, blood pressure, temperature, and medical history.

VA.R. Doc. No. R94-1014; Filed May 25, 1994, 11:09 a.m.

BOARD OF GAME AND INLAND FISHERIES

Title of Regulation: **VR 325-01-1. Definitions and Miscellaneous: In General.**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: July 15, 1994.

Summary:

The amendments prescribe in regulation the fees to be charged by the Board of Game and Inland Fisheries for permits required by the Code of Virginia to (i) capture, hold, propagate, and dispose of wildlife as specified in § 29.1-417; (ii) collect specimens as specified in § 29.1-418; (iii) conduct field trials as specified in § 29.1-422; and (iv) conduct regattas, races, marine parades, tournaments, or exhibitions as specified in § 29.1-743. The amendments also exempt veterinarians from permit requirements when wildlife is being held temporarily for medical treatment.

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

Agency Contact: Copies of the regulation may be obtained from Mark D. Monson, Chief, Administrative Services, 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 325-01-1. Definitions and Miscellaneous: In General.

§ 1. Definitions; generally.

Words and phrases used in any regulations made by the board shall have the same meaning, unless the context clearly indicates otherwise, as is given for such words and phrases in the Virginia Game and Inland Fisheries laws contained in Title 29.1 of the Code of Virginia.

§ 2. Definitions; "Counties east of the Blue Ridge Mountains."

Whenever the words "counties east of the Blue Ridge Mountains," or language equivalent thereto, appear in a regulation of the board, such words shall apply to the following counties and cities:

Accomack, Albemarle, Amelia, Amherst, Appomattox, Arlington, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesapeake City, Chesterfield, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Franklin, Gloucester, Goochland, Greene, Greensville, Halifax, Hampton City, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Newport News

City, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Southampton, Spotsylvania, Stafford, Suffolk City, Surry, Sussex, Virginia Beach City, Westmoreland, and York.

§ 3. Definitions; "Counties west of the Blue Ridge Mountains."

Whenever the words "counties west of the Blue Ridge Mountains," or language equivalent thereto, appear in a regulation of the board, such words shall apply to the following counties:

Alleghany	Lee
Augusta	Montgomery
Bath	Page
Bland	Pulaski
Botetourt	Roanoke
Buchanan	Rockbridge
Carroll	Rockingham
Clarke	Russell
Craig	Scott
Dickenson	Shenandoah
Floyd	Smyth
Frederick	Tazewell
Giles	Warren
Grayson	Washington
Highland	Wise
	Wythe

§ 3-1. Definitions; Dismal Swamp Line.

Whenever the words "Dismal Swamp Line," or language equivalent thereto, appear in a regulation of the board, such words shall apply to a line: Beginning at a point on State Highway 10 where it intersects the Isle of Wight County line, thence along such highway to its intersection with the corporate limits of the City of Suffolk, thence through the corporate limits of the City of Suffolk to its intersection with State Secondary Highway 642, and thence along State Secondary Highway 642 (White Marsh Road) in a southerly and westerly direction to State Secondary Highway 604 (Desert Road), and thence southerly along State Secondary Highway 604 to the North Carolina line.

§ 4. [Repealed.]

§ 5. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal" and "domestic animal."

In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid thereof, except as otherwise specified in regulations of the board, or part, product, egg, or offspring thereof, or the dead body or parts thereof.

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 1991 official listing of "Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's 1991 official listing of "Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals.

Domestic dog (Canis familiaris).

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus).

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa domestica), including pot-bellied pig.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kg or their coat color can be distinguished from wild mink.

Domesticated races of red fox (Vulpes) where their coat color can be distinguished from wild red fox.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated races of European rabbit (Oryctolagus cuniculus).

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

§ 6. Definitions; "Person."

The word "person," when used in the regulations of the board, may extend and be applied to bodies politic and corporate as well as individuals.

§ 7. Violations of regulations.

Any violation of any regulation or part thereof of the board is made a misdemeanor by §§ 29.1-505 and 29.1-746 of the Code of Virginia and persons convicted of such violation will be punished as provided in said sections or other applicable provisions of the Code of Virginia.

§ 8. Certificate on hunting, trapping and fishing license to be executed by licensee.

No state or county resident license to hunt, trap of fish in or on the lands or inland waters of this Commonwealth shall be deemed to be issued until the certificate printed on the reverse side thereof shall have been executed by the named licensee.

§ 9. Permits for drilling, dredging and other operations in Back Bay area.

Drilling, dredging and any other operation designed to recover or obtain shell, minerals or any other substance shall be unlawful on lands owned by or under the control of the Commonwealth of Virginia under Back Bay, its tributaries and the North Landing River from the North Carolina line to North Landing Bridge unless a permit is first obtained from the board. Application for a permit under this section shall be made to the board in such form and substance as the board may require. Under the authority of § 29.1-103 of the Code of Virginia, the board shall grant or refuse such permits as conditions may require in order to prevent practices and operations which would harm the area for fish and wildlife.

§ 10. Prohibited use of vehicles on department-owned lands.

It shall be unlawful on department-owned lands to drive through or around gates designed to prevent entry with any type of motorized vehicle or to use such vehicles to travel anywhere on such lands except on roads open to vehicular traffic. Any motor-driven conveyance shall conform with all state laws for highway travel; provided, that this requirement shall not apply to the operation of motor vehicles for administrative purposes by department-authorized personnel on department-owned lands.

§ 11. Refusal to surrender licenses, permits, stamps or records to department representatives.

No agent, or any other person for him, in possession of issued or unissued hunting, fishing or trapping licenses, permits or stamps or records pertaining thereto, shall refuse to surrender upon demand such licenses, permits, stamps or records to department representatives authorized by the director to take such licenses, permits, stamps and records into custody.

§ 12. Appointment of new consignment agents for sale of hunting and fishing licenses.

A. Except as provided below, no person shall be appointed as a consignment agent for the sale of hunting and fishing licenses unless he first sells licenses on a cash basis for at least one year. In addition, the dollar volume of actual or projected sales must equal at least 90% of the average hunting and fishing license sales of consignment agents in the locality.

B. If the cash agent sells the required number of licenses, he may be appointed as a consignment agent, provided he is approved for a surety bond by the board's bonding company.

C. This regulation is applicable to new appointments and not to transfers of existing appointments; provided, that the director may appoint consignment agents as needed to provide for a minimum of two consignment agents within a locality. In addition, the director may appoint consignment agents on state-owned or state-leased facilities.

§ 13. Endangered and threatened species. Adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 U.S.C. 1531-1543), as amended, and declares all species listed thereon to be endangered or

threatened species in the Commonwealth.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6, Chapter 5, Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus Tennesseensis
Darter, duskytail	Etheostoma sp
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, Tippecanoe	Etheostoma tippecanoe
Darter, greenfin	Etheostoma chlorobranchium
Darter, longhead	Percina macrocephala
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum

Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake	Crotalus horridus atricaudatus
Turtle, bog	Clemmys muhlenbergii
Turtle, chicken	Deirochelys reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Clemmys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Wren, Bewick's	Thryomanes bewicki

Threatened:

Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Ammophila aestivalis
Sparrow, Henslow's	Ammodrammus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, eastern big-eared	Plecotus rafinesquii macrotis
Hare, snowshoe	Lepus americanus
Shrew, water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

6. Molluscs:

Endangered:

Bean, purple	Villosa perpurpurea
Cavesnail, Unthanks	Holsingeria unthanksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Combshell, Cumberland	Epioblasma brevidens
Deertoe	Truncilla truncata
Elephant-ear	Elliptio crassidens
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, oyster	Epioblasma capsaeformis
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pink	Pleurobema rubrum
Snuffbox	Epioblasma triquetra
Spectaclecase	Cumberlandia monodonta
Supercoil, spirit	Paravitrea hera

Threatened:

Papershell, fragile	Leptodea fragilis
Pearlymussel, slabside	Lexingtonia dolabelloides
Pigtoe, Atlantic	Fusconaia masoni
Pimpleback	Quadrula pustulosa pustulosa
Rabbitsfoot, rough	Quadrula cylindrica strigillata
Riversnail, spiny	Io fluvialis
Sandshell, black	Ligumia recta
Sheepnose	Plethobasus cyphyus
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

C. It shall be unlawful to take, transport, process, sell or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife.

§ 14. Endangered species; definitions.

For the purposes of §§ 29.1-564 through 29.1-570 of the Code of Virginia, § 13 of this regulation and this section:

1. "Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range within the Commonwealth, other than a species of the class Insecta deemed to be a pest whose protection would present an overriding risk to the health or economic welfare of the Commonwealth.

2. "Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, without limitation, and includes any part, products, egg or the dead body or parts thereof.

3. "Harass," in the definition of "take," means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

4. "Harm," in the definition of "take," means an act which actually kills or injures wildlife. Such act may include significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

5. "Person" means any individual, firm, corporation, association or partnership.

6. "Special concern" means any species, on a list maintained by the director, which is restricted in distribution, uncommon, ecologically specialized or threatened by other imminent factors.

7. "Species" includes any subspecies of fish or wildlife and any district population segment of any species or vertebrate fish or wildlife which interbreed when mature.

8. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess or collect, or to attempt to engage in any such conduct.

9. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the Commonwealth.

§ 15. Structures on department-owned lands and national forest lands.

A. It shall be unlawful to construct, maintain or occupy any permanent structure, except by permit, on department-owned lands and national forest lands. This provision shall not apply to structures, stands or blinds provided by the department.

B. It shall be unlawful to maintain any temporary dwelling on department-owned lands for a period greater than 14 consecutive days. Any person constructing or occupying any temporary structure shall be responsible for complete removal of such structures when vacating the site.

C. It shall be unlawful to construct, maintain or occupy any tree stand on department-owned lands and national forest lands ; provided, that portable tree stands which are not permanently affixed may be used.

§ 16. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals:

a. House mouse (Mus musculus).

b. Norway rat (Rattus norvegicus).

c. Black rat (Rattus rattus).

d. Coyote (Canis latrans).

2. Birds:

a. European starling (Sturnus vulgaris).

b. English (house) sparrow (Passer domesticus).

c. Pigeon (Rock Dove) (Columba livia).

B. It shall be unlawful to take, possess, transport or sell all other wildlife species not classified as game, furbearer or nuisance, or otherwise specifically permitted by law or regulation.

§ 17. Taking and possession of certain rodents for private use.

Except as otherwise provided for in the Code of Virginia and regulations of the board, it shall be lawful to take and possess no more than three individuals of any single species of rodents (order Rodentia) for private use except for those species listed as game or furbearers, endangered or threatened (Code of Virginia, § 29.1-568), or listed as special concern, including the following:

1. Allegheny woodrat (Neotoma floridana).

2. Pungo mouse (Peromyscus leucopus easti).

3. Rock vole (Microtus chrotorrhinus carolinensis).

4. Cotton mouse (Peropmyscus gossypinus gossypinus).

§ 18. Taking of invertebrates.

A. Earthworms.

Earthworms may be taken at any time for private or commercial use.

B. Other invertebrates.

Except as otherwise provided for in §§ 3.1-1020 through 3.1-1030 and 29.1-418 of the Code of Virginia and in VR 325-01-1, § 13, VR 325-01-2 and VR 325-03-5, § 1 invertebrates, other than those listed in endangered or threatened, may be taken for private use.

§ 19. Definitions; "designated stocked trout waters."

When used in regulations of the board, "designated stocked trout waters" will include those waters that are stocked with harvestable-sized trout and are listed by the director in the annual Trout Stocking Plan. Designated stocked trout waters are posted by the department with appropriate "stocked trout waters" signs.

§ 20. Fees for miscellaneous permits.

A. Pursuant to §§ 29.1-417, 29.1-418, 29.1-422, 29.1-743 and other applicable provisions of the Code of Virginia, except as provided by these regulations the following fees shall be paid by applicants for the specified permits before any such permit may be issued.

Boat Ramp Special Use

Nonprofit Public Use *$10*

Private/Commercial Use *$50*

Boat Regattas/Tournaments *$50/day*

Collect and Sell *$50*

Commercial Nuisance Animals *$25*

Deer Farming *$350*

Exhibitors

Commercial Use *$50*

Educational/Scientific Use *$20*

Exotic Importation and Holding *$10*

Field Trial *$25*

[~~*Fish Stocking*~~ ..... ~~*$ 5*~~]

Hold for Commercial Use ..... [~~*$50*~~ *$10*]

Propagation

Commercial Use *$50*

Private Use *$20*

Licensed Shooting Preserves *$20*

Rehabilitation *$10*

Scientific Collection *$20*

Special Hunting Permit *$10*

Striped Bass Tournament *$10*

Threatened & Endangered Species *$20*

[*Trout Catch-Out Pond* ..... *$50*]

Wolf Hybrid – Individual

Nonneutered *$20/animal*

Neutered *$10/animal*

Wolf Hybrid – Kennel *$100*

B. Veterinarians shall not be required to [pay a permit fee or to] obtain a permit to hold wildlife temporarily for medical treatment.

VA.R. Doc. No. R94-1018; Filed May 25, 1994, 11:52 a.m.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

REGISTRAR'S NOTICE: The agency is claiming an exemption 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 exempts from this Act agency actions relating to grants of state or federal funds or property.

Title of Regulation: **VR 350-01-1. Public Participation Guidelines.**

Statutory Authority: §§ 2.1-708 (3) and 9-6.14:7.1 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

The public participation guidelines were initially promulgated in November 1984. The guidelines were developed in accordance with the requirements of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The Governor's Employment and Training Department was subsequently advised that the agency's regulatory actions were, in accordance with § 9-6.14:1 B 4 relating to grants of federal funds exempted from these requirements. Therefore

reference to the requirements of the Administrative Process Act has been removed from the public participation guidelines. The revised regulations were adopted under emergency provisions. A notice of request for comments was issued in accordance with provisions set forth in these public participation guidelines. No comments were received. Therefore, the Governor's Employment and Training Department has adopted the revised regulation as written.

The public participation guidelines establish a process which fully involves the community to be regulated in the development of the regulations. A definitions section was added for clarity. Additionally, the guidelines have been updated to reflect reassigned responsbilities within the Governor's Employment and Training Department.

Agency Contact: Gail R. Nottingham, Administrator, Research Policy and Evaluation Unit, Governor's Employment and Training Department, 4615 West Broad Street, Richmond, VA 23230, telephone (804) 367-9827 or (804) 367-6283/TDD.

VR 350-01-1. Public Participation Guidelines.

§ 1. Definitions.

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

"DOL" means the United States Department of Labor.

"GETD" means the Governor's Employment and Training Department.

"JTPA" means the Job Training Partnership Act, Public Law 97-300, as amended.

"SDA" means the administrative entity in a geographic area which has been designated by the Governor as a service delivery area for the purpose of providing employment and training services authorized under Title II of JTPA. The term shall also include the substate grantee which administers the programs authorized under Title III of JTPA.

§ ~~1.~~ *§ 2.* Generally.

A. In developing any regulation which it proposes, the ~~Governor's Employment and Training Division ("GETD")~~ *GETD* is committed to soliciting input and comment from interested persons and groups. Such input and participation shall be actively solicited by the GETD.

B. Any person who is interested in participating in the regulation development process should ~~immediately~~ notify the GETD in writing. Such notification of interest should be sent to the ~~Technical Assistance Unit. Governor's Employment and Training Division. P. O. Box 12083, Richmond, VA 23241.~~ *Research, Policy and Evaluation Unit of the Governor's Employment and Training Department at 4615 West Broad Street, Richmond, Virginia 23230.*

C. Any person may submit a petition to the GETD at the address in subsection B to request that a new regulation be developed or that an existing regulation be amended. The GETD shall evaluate and respond to each request within 180 days of receipt. Petitions shall be in writing and shall, at a minimum, include the following:

1. The area to be developed or amended;

2. A brief description of the circumstances or conditions upon which the request is based; and

3. The name, address and telephone number of the individual making the request.

§ ~~2.~~ *§ 3.* Identification of interested parties.

A. Prior to the development of any regulation, the GETD shall identify persons whom it feels would be interested in or affected by the proposal. *The GETD shall inform the SDAs and state agencies with responsibilities for implementing JTPA programs of the intent to develop regulations.*

B. The methods for identifying *additional* interested parties shall include, but not be limited to, the following:

~~1. Obtain annually from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the annual General Assembly session. This list will be used to identify persons and groups which may be interested in the subject matter of proposed regulations.~~

~~2. Utilize the statewide listing of business, professional, civic and charitable associations and societies in Virginia published by the State Chamber of Commerce to identify additional groups which might be interested in the regulation.~~

~~3.~~ *1.* Utilize GETD subject matter files to identify persons who have previously raised questions or expressed an interest in the subject matter under consideration.

~~4.~~ *2.* Utilize a standing list, compiled by the GETD, of persons who have previously ~~participated in public proceedings relative to similar subject matters or who have~~ expressed an interest in regulations of the GETD.

§ ~~3.~~ *§ 4.* Notification of interested parties.

~~1. Generally.~~ *A.* The GETD shall prepare a Notice of Intent to Develop Regulation ("notice") prior to the development of any regulation. The notice shall identify

the subject matter and purpose for the development of the new regulation(s) and shall specify a time deadline for receipt of responses from persons interested in participating in the development process. *The notice shall specify that interested parties should submit written comments and suggestions to the GETD.*

~~2. Dissemination of notice.~~ *B.* The methods for disseminating the notice to the public shall include, but not be limited to, the following:

~~a.~~ *1.* Send notice to all persons identified (pursuant to ~~subsection B above~~ *§ 2 of these regulations)* as having potential interest in the regulation;

~~b. Publish notice in Virginia Register; and~~

~~c.~~ *2.* Request that groups to whom the notice is sent ~~publish such notice in newsletters or journals or use any other means available to them to~~ disseminate the notice ~~to the membership~~ *as appropriate.*

§ ~~4.~~ *§ 5.* Public participation.

A. Regulation development.

1. Initial comment. After interested parties have responded to the notice, the GETD will analyze the level of interest. If sufficient interest exists, the GETD may schedule informal meetings prior to the development of any regulation to determine the specific areas of interest ~~and/or~~ *or* concern and to gather information relative to the subject matter of the regulation. ~~Alternatively, the GETD may elect to request that persons who have responded to the notice make written submittals of comments, concerns and suggestions relative to the proposed regulation.~~

2. Preparation of working draft. ~~Subsequent to the initial public input on the development of any regulation, the GETD shall develop a working draft of the proposed regulation.~~

a. The GETD shall utilize DOL regulations for and guidance on JTPA and all responses received during the initial comment period to develop a working draft.

b. In certain instances ~~where the technical nature of the subject matter merits~~ , the GETD may , *at its discretion,* request that interested persons or groups ~~develop~~ *participate in a task force to assist in the development of* a working draft. A copy of this draft will be furnished to all persons who ~~responded to the notice indicating an interest in the regulation~~ *participated on the task force and to SDAs and state agencies with responsibilities under JTPA* and to those persons participating in the initial comment phase of the development process. Persons to whom a copy of the working draft is furnished will be invited to submit written comments on the draft. If the response warrants, additional informal meetings may be held to discuss the working draft.

B. Submission of regulation.

~~To conform to the administrative process act, upon conclusion of the development process, the GETD shall prepare the proposed regulation for submission pursuant to the requirements of the Administrative Process Act ("APA"). The GETD shall furnish to all persons identified as having a potential interest in the subject matter, a copy of the proposed regulation as filed with the Registrar of Regulations pursuant to the requirements of the APA together with a copy of the General Public Notice of Informational Proceeding. A cover letter accompanying these documents shall explain the deadlines for submitting formal public comments under the APA. If a nonsubstantive regulation is being promulgated and comment will be restricted to written submittals, the date and place to which submittals must be made shall be clearly specified. Where a public proceeding is to be held, the time, date, and place shall be clearly specified. Additionally, the date by which persons intending to participate in the public proceeding should notify the GETD of their interest shall be noted. Persons who will participate will be encouraged to submit written copies of their comments in advance or at the public proceeding in order to insure that all comments are accurately reflected in the record of the proceeding.~~

1. Upon completion of the comment period, the GETD shall analyze all comments and suggestions received and shall finalize the regulations. The GETD shall prepare the final regulations and accompanying materials for submission to the Secretary of Health and Human Resources for review and to The Virginia Register for publication.

2. If one or more changes with substantial impact are made to the draft regulation from the time it is disseminated to the time it is published, any person may petition the GETD within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. Petitions shall be in writing and shall, at a minimum, include the following:

a. The section of the regulation questioned;

b. A brief description of the impact of the changes; and

c. The name, address and telephone number of the individual making the request.

3. The GETD shall analyze all requests to determine if there is sufficient reason to solicit additional public comment. If the GETD determines to solicit additional comment or if the GETD receives 25 or more requests, the GETD shall suspend the regulato process for 30 days in order to fully explore the

issues. In all instances, the GETD shall provide each individual submitting a request with a written decision on the issues raised in the request.

C. Adoption period.

Upon issuing an order adopting a regulation, the GETD *shall provide SDAs and state agencies with responsibilities under JTPA a copy of the regulation as adopted and* , at its discretion, may send a copy of the regulation as adopted, together with its response to comments made during the public proceeding or written submittal period, to *other* interested persons and groups.

VA.R. Doc. No. R94-1003; Filed May 24, 1994, 12:27 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (REPEALED).**

Statutory Authority: §§ 40.1-6(3) and 40.1-114 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

Chapter 551 of the 1991 Acts of Assembly amended §§ 40.1-78 through 40.1-79 of the Code of Virginia by removing the exemption for the employment of minors on farms, in gardens and in orchards. Pursuant to §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114, the Commissioner of the Department of Labor and Industry has the authority and duty, effective July 1, 1991, to regulate children working in agriculture.

As the effective date of the enabling legislation did not allow sufficient time to comply with the provisions of the Administrative Process Act (APA), an emergency regulation was adopted effective July 1, 1991, to provide sufficient time for the department to promulgate regulations in compliance with the requirements of the APA. A final Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards, VR 425-01-81, was promulgated with an effective date of July 1, 1992.

Based on the public comments received following the regulation's final adoption, the commissioner determined that the regulation would have a seriously negative impact on the traditional available labor supply.

To assure that the current regulation did not negatively impact the upcoming growing season, and to accommodate the statutory changes to the Administrative Process Act that became effective July 1, 1993, an emergency regulation was adopted effective June 30, 1993, through June 29, 1994.

A new regulation, VR 425-01-81:1, governing the employment of minors in agricultural occupations has been developed. When this new regulation is effective, the current regulation will no longer be necessary and is being repealed.

VA.R. Doc. No. R94-971; Filed May 11, 1994, 10:47 a.m.

* * * * * * * *

Title of Regulation: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.**

Statutory Authority: §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

This 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 employed by their parents on their own farms; student learners; and 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.

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 Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631. There may be charge for copies.

VR 425-01-81:1. Regulation Governing the Employment of

Minors on Farms, in Gardens and in Orchards.

§ 1. Definitions.

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

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in § 15(g) of the Federal Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Commissioner" means the Virginia Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"Employ" includes to suffer or permit to work. The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms "employer" and "employ" are broader than the common law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists. However, these are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words "suffer or permit to work" include those who suffer by a failure to hinder and those who permit by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an underaged minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer's work. If the employer acquiesces in the practice or fails to exercise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him.

§ 2. Hazardous occupations.

This section identifies the occupations on farms, in gardens, and in orchards which are particularly hazardous for minors under 16 years of age. No employer shall employ, suffer, or permit a minor under 16 years of age to work in any of the following occupations, deemed to be particularly hazardous, except as provided in § 3 of this regulation:

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

a. Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

b. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

c. Power post-hole digger, power post driver, or nonwalking type rotary tiller.

3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

a. Earthmoving equipment;

b. Fork lift;

c. Potato combine; or

d. Chain saw.

4. Working on a farm in a yard, pen, or stall occupied by:

a. A bull, boar, or stud horse maintained for breeding purposes; or

b. A sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

5. Working from a ladder at a height of over 20 feet for purposes such as pruning trees, picking fruit, etc.

6. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

7. Working inside:

a. A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

b. An upright silo within two weeks after silage has been added or when a top unloading device is in

operating position;

c. A manure pit; or

d. A horizontal silo while operating a tractor for packing purposes.

8. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;

9. Handling or using a blasting agent including, but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

10. Transporting, transferring, or applying anhydrous ammonia.

§ 3. Exemptions to hazardous occupations.

A. This section provides exemptions to the restrictions on hazardous occupations on farms, in gardens and in orchards set forth in § 2 of this regulation.

B. Section 2 shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

C. [*Student learners.*]

Minors 14 and 15 years of age are exempted from the occupations listed in subdivisions 1 through 5 of § 2 when each of the following requirements are met:

1. A student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority, or in a substantially similar program conducted by a private school;

2. Such student-learner is employed under a written agreement which provides that:

a. The work of the student-learner is incidental to his training;

b. Such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

c. Safety instruction shall be given by the school and correlated by the employer with on-the-job training; and

d. A schedule of organized and progressive work processes to be performed on the job have been prepared;

3. Such written agreement contains the name of the student-learner, and is signed by the employer and by a person authorized to represent the educational authority or school; and

4. Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

D. [*Federal extension service.*]

Section 2 shall not apply to the employment of a child under 16 years of age in those occupations in which he has successfully completed one or more training programs described in subdivisions D 1, D 2, and D 3 of this section provided he has been instructed by his employer on safe and proper operation of the specific equipment he is to use; is continuously and closely supervised by the employer where feasible; or, where not feasible, in work such as cultivating, his safety is checked by the employer at least at midmorning, noon, and midafternoon.

1. 4-H Tractor Operation Program. The child is qualified to be employed in an occupation described in subdivision 1 of § 2 provided:

a. He is a 4-H member;

b. He is 14 years of age or older;

c. He is familiar with the normal working hazards in agriculture;

d. He has completed a tractor training program approved by 4-H and conducted by, or in accordance with the requirements of, the cooperative extension service of a land grant university;

e. He has passed a written examination on tractor safety and has demonstrated his ability to operate a tractor safely with a two-wheeled trailed implement on a course similar to one of the 4-H Tractor Operator's Contest Courses; and

f. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable by the department, signed by the leader who conducted the training program and by an extension agent of the cooperative extension service of a land grant university to the effect that the child has completed all the requirements specified in subdivisions D 1 a, D 1 b, D 1 c, D 1 d, and D 1 e of this section.

2. 4-H Machine Operation Program. The child is

qualified to be employed in an occupation described in subdivision 2 of § 2 providing:

a. He satisfies all the requirements specified in subdivisions D 2 b, D 2 c, and D 2 d of this section;

b. He has completed an additional 10-hour training program on farm machinery safety, including 4-H Fourth-Year Manual, Unit 1, Safe Use of Farm Machinery, or a similar training program approved by the commissioner;

c. He has passed a written and practical examination on safe machinery operation; and

d. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the leader who conducted the training program and by an extension agent of the cooperative extension service of a land grant university, to the effect that the child has completed all of the requirements specified in subdivisions D 2 a, D 2 b, and D 2 c of this section.

3. Tractor and Machine Operation Program. The child is qualified to be employed in an occupation described in subdivisions 1 and 2 of § 2 providing:

a. He is 14 years of age, or older;

b. He has completed a four-hour orientation course familiarizing him with the normal working hazards in agriculture;

c. He has completed a 20-hour training program on safe operation of tractors and farm machinery, which covers all material specified in subdivisions D 1 d and D 2 b of this section;

d. He has passed a written examination on tractor and farm machinery safety, and has demonstrated his ability to operate a tractor with a two-wheeled trailed implement on a course similar to a 4-H Tractor Operator's Contest Course, and to operate farm machinery safely; and

e. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the volunteer leader who conducted the training program and by an extension agent of the cooperative extension service of a land grant university, to the effect that all of the requirements of subdivisions D 3 a, D 3 b, D 3 c, and D 3 d of this section have been met.

E. [Vocational agriculture training.]

Section 2 of this regulation shall not apply to the employment of a vocational agriculture student under 16 years of age in those occupations in which he has successfully completed one or more training programs described in subdivision E 1 or E 2 of this section and who has been instructed by his employer in the safe and proper operation of the specific equipment he is to use, who is continuously and closely supervised by his employer where feasible or, where not feasible, in work such as cultivating, whose safety is checked by the employer at least at midmorning, noon, and midafternoon, and who also satisfies whichever of the following program requirements are pertinent:

1. Tractor Operation Program. The student is qualified to be employed in an occupation described in subdivision 1 of § 2 provided:

a. He is 14 years of age or older;

b. He is familiar with the normal working hazards in agriculture;

c. He has completed (i) the tractor operation training program required by United States Department of Labor child labor regulations applicable to vocational agriculture students, or (ii) a similar training program approved by the commissioner. Information regarding the availability of these training programs may be obtained from the Virginia Department of Labor and Industry;

d. He has passed both a written test and a practical test on tractor safety including a demonstration of his ability to operate safely a tractor with a two-wheeled trailed implement on a test course similar to that provided in the training programs described above; and

e. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the vocational agriculture teacher who conducted the program to the effect that the student has completed all the requirements specified in subdivisions E 1 a, E 1 b, E 1 c, and E 1 d of this section.

2. Machinery Operation Program. The student is qualified to be employed in an occupation described in subdivision 2 of § 2 provided he has completed the Tractor Operation Program described in subdivision E 1 of this section, and:

a. He has completed (i) the machinery operation training program required by United States Department of Labor child labor regulations applicable to vocational agriculture students, or (ii) a similar training program approved by the commissioner. Information regarding the availability

of these training programs may be obtained from the Virginia Department of Labor and Industry;

b. He has passed both a written test and a practical test on safe machinery operation similar to that provided in the training programs described above; and

c. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the vocational agriculture teacher who conducted the program to the effect that student has completed all the requirements specified in subdivisions E 2 a and E 2 b of this section.

F. The commissioner will appoint an Advisory Committee on Farm Safety Training Materials. The committee shall be composed of qualified persons knowledgeable about such matters. Upon advice of the committee, the commissioner will approve and publish a list of approved training materials as necessary to permit compliance with this section.

§ 4. Record keeping requirements.

Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 16 years of age on days when school is in session or on any day if the minor is employed in a hazardous occupation shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

1. Name in full,

2. Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses.

3. Date of birth.

§ 5. Nonapplicability of general industry regulations to agriculture.

The Virginia Rules and Regulations Declaring Hazardous Occupations, VR 425-01-77, shall not apply to any occupation on farms, in gardens and in orchards.

VA.R. Doc. No. R94-972; Filed May 11, 1994, 10:48 a.m.

BOARD OF NURSING

Title of Regulation: **VR 495-04-1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

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 Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9904. There may be a charge for copies.

VR 495-04-1. Public Participation Guidelines.

PART I.
GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Nursing. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. 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.

"Board" means the Board of Nursing.

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

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.

2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-1015; Filed May 25, 1994, 11:10 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 615-01-11. Disregard of Certain Income Received by Indian Tribes in the Aid to** *Families with* **Dependent Children ~~(ADC)~~** *(AFDC)* **Program.**

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

Effective Date: July 13, 1994.

Summary:

This regulation disregards up to $2,000 of income of individual Indians derived from uses of leased trust lands in the determination of eligibility for Aid to Families with Dependent Children.

Action Transmittal ACF-AT-93-14 issued by the Department of Health and Human Services instructed states to disregard up to $2,000 of income received by individual Indians from the lease or other uses of trust lands. This action transmittal was issued pursuant to the passage of Public Law 103-66, which amended Public Law 93-134. The Department of Social Services will receive and consider comments from interested parties at any time.

VR 615-01-11. Disregard of Certain Income Received by Indian Tribes in the Aid to Families with Dependent Children (AFDC) Program.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Available resource" means real and personal property, both liquid and nonliquid, including cash, bank accounts, the cash value of life insurance, trust funds, stocks, bonds,

mutual funds or any other financial instruments which the assistance unit has the right, authority, or power to liquidate.

PART II.
TREATMENT OF CERTAIN INCOME RECEIVED BY INDIAN TRIBES.

§ 2.1. *Treatment of certain income received by Indian tribes.*

Any funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 98-64, 98-123, ~~or~~ 98-124 , *or 97-458* will be disregarded and not considered as income or available resources. ~~Further,~~ Interest and investment income accrued on Indian funds while held in trust, and any purchases made with such trust funds, including purchases made with the interest or investment income accrued on funds while in trust, are disregarded and not to be considered as income or available resources and will not be used to reduce or deny assistance or benefits to which the individual, or household, would otherwise be entitled to receive. *Further, up to $2,000 per year of income received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands shall be disregarded as income, and shall not be used to reduce or deny assistance or benefits to which the individual, or household, would otherwise be entitled to received.*

VA.R. Doc. R94-993; Filed May 12, 1994, 7:41 a.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
804-786-3591

May 25, 1994

Mr. Larry D. Jackson, Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23229

Re: VR 615-01-11 - Disregard of Certain Income Recieved by Indian Tribes in the Aid to Families with Dependent Children (AFDC) Program.

Dear Mr. Jackson:

This will acknowledge receipt of the above-referenced regulations from the Department of Social Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith

Joan W. Smith
Registrar of Regulations

* * * * * * * *

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 615-01-29. Aid to** *Families with* **Dependent Children (~~ADC~~)** *(AFDC)* **Program - Disregarded Income and Resources.**

Statutory Authority: §§ 63.1-25 and 63.1-98 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

According to an Aid to Families with Dependent Children (AFDC) Action Transmittal Number ACF-AT-93-8 from the Department of Health and Human Services, states must disregard in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, all student financial assistance received under the programs in Title IV of the Higher Education Act or under the Bureau of Indian Affairs student assistance programs. The regulation assures compliance with federal laws.

VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Agent Orange payments" means any payment from the Agent Orange Settlement Fund or any other fund established pursuant to the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

"Aid to Families with Dependent Children (AFDC) Program" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Allowable reserve" means the type and amount of real and personal property, including cash and liquid assets, which may be retained by the assistance unit without affecting eligibility for financial assistance.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive an assistance payment.

"Attendance costs" means tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

"Emergency" means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

"Native Corporation" means regional, village, urban or group corporations organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage, or distribute lands, funds, and other rights and assets for or on behalf of members of a native group in accordance with the Alaska Native Claims Settlement Act.

PART II.
DISREGARDED INCOME AND RESOURCES.

§ 2.1. Disregarded income.

A. The following income of members of the assistance unit, a parent not included in the assistance unit or anyone whose income is used in determining eligibility or the amount of assistance in the Aid to Families with Dependent Children (AFDC) program, shall be disregarded.

B. Income which is disregarded under the following provisions shall not be counted in determining the need for assistance of any individual under any other federal assistance program:

1. Home produce of the assistance unit utilized for their own consumption;

2. The value of food coupons under the Food Stamps program;

3. The value of foods donated under the U.S.D.A. Commodity Distribution Program, including those furnished through school meal programs;

4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. Commissioner of Education.

Programs that are administered by the U.S. Commissioner of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

7. Funds derived from the College Work Study Program;

8. A scholarship, loan, or grant obtained and used under conditions which preclude its use for current living costs;

9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs. This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;

10. Any portion of an SSI payment or Auxiliary Grant;

11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less the minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1973;

12. The Veterans Administration educational amount for the caretaker 18 or older is to be disregarded when it is used specifically for educational purposes.

Any additional money included in the benefit amount for dependents is to be counted as income to the assistance unit;

13. Foster care payments received by anyone in the assistance unit;

14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible child(ren) is to be counted as income to the assistance unit;

15. Income tax refunds including earned income tax credit advance payments and refunds;

16. Payments made under the Fuel Assistance program;

17. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;

18. HUD Section 8 and Section 23 payments;

19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) is to be disregarded;

20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

21. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an

interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);

23. The first $50 of total child or spousal support payments received each month by an assistance unit prior to the issuance of the first ongoing check;

24. Payments sent to the recipient by the Commonwealth which are identified as disregarded support;

25. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

26. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383);

27. Agent Orange payments;

28. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

29. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law (96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

30. Student financial assistance received under ~~the Higher Education Technical Amendments Act of 1987 made available for attendance costs (Public Law 100-50);~~ ~~and~~ *Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);*

31. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392) ~~.~~ *; and*

32. Student financial assistance received under the Bureau of Indian Affairs student assistance programs.

§ 2.2. Disregarded resources.

In determining eligibility for financial assistance for the Aid to Families with Dependent Children (AFDC) program, all resources shall be considered in relation to the $1,000 allowable reserve, except as specifically disregarded below. These resources shall be disregarded as long as they are kept separate from the allowable reserve. In ... funds derived from subdivisions 3 through 16 of ... section are combined with other resources, they shall be considered in determining eligibility.

1. The value of the food coupons under the Food Stamp Program;

2. The value of foods donated under the U.S.D.A. Commodity Distribution Program;

3. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

4. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

5. Grants or loans to undergraduate students for educational purposes, made or insured under any program administered by the U.S. Commissioner of Education.

Programs that are administered by the U.S. Commissioner of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

6. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs, the Women, Infants, and Children (WIC) program, and the Child Care Food program;

7. Payments to VISTA volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-113, the Domestic Volunteer Service Act of 1973;

8. Funds distributed to, or held in trust for, members of any Indian tribe under Public Law 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

9. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):

...ibuted by a ...or distribution on

...est;

... an interest in land (including land or an ...st in land received from a Native Corporation ...s a dividend or distribution on stock); and

e. An interest in a settlement trust.

10. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 94-114);

11. Disregarded support payments which were sent to the recipient by the Virginia Department of Social Services or determined to be a disregard by the eligibility worker;

12. Tools and equipment belonging to a temporarily disabled member of the assistance unit during the period of disability, when such tools and equipment have been and will continue to be used for employment;

13. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

14. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Island Restitution Act (Public Law 100-383);

15. Agent Orange payments;

16. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

17. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law (96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

18. Student financial assistance received under ~~the Higher Education Technical Amendments Act of 1987 made available for attendance costs (Public Law 100-50);~~ ~~and~~ *Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);*

...student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392) ~ ; *and*

20. Student financial assistance received under the Bureau of Indian Affairs student assistance programs.

VA.R. Doc. No. R94-995; Filed May 19, 1994, 3:40 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 25, 1994

Mr. Larry D. Jackson, Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23229

Re: VR 615-01-29 - Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.

Dear Mr. Jackson:

This will acknowledge receipt of the above-referenced regulations from the Department of Social Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith

Joan W. Smith
Registrar of Regulations

JWS/jbc

* * * * * * * *

Title of Regulation: **VR 615-53-01.2. Child Day Care Services Policy.**

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

This policy provides the guidance for local departments of social services to enable them to comply with federal regulations for child day care programs and to help assure the health and safety of children in child care funded through programs administered by the department.

This regulation provides policy for all of the child day care programs that are administered by local departments of social services. It updates policy so that health and safety requirements are applied to unregulated child day care providers, and it proposes a new statewide sliding fee scale for those programs where fees are paid. It identifies the populations that are eligible for assistance with child day care services and the reasons assistance is given. It identifies the providers that can be used, how they will be selected, and how they will be paid. It specifies how services to families will be offered and monitored, and how families will be determined eligible. It includes what families will have to pay a fee for child day care and how those fees will be determined. It also identifies how complaints related to child day care settings used will be handled.

Changes to the regulation since it was published as proposed (i) allow alternative scales for the income eligible fee system programs if they are due to the high cost of living for a locality, or if they meet criteria and are approved by the department and the local board; and (ii) change the state sliding fee scale to charge a fee of 10% of gross income for customers whose income falls up to 60% of the State Median Income (SMI). Customers whose income falls between 61% and 75% of the SMI will be charged a fee of 15% of gross income. Also, the final regulation requires that waiting lists for the fee system programs be updated at least annually.

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 Peggy Friedenburg, Regulatory Coordinator, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

VR 615-53-01.2. Child Day Care Services Policy.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Aid to Families with Dependent Children (AFDC)" means a program established by Title IV-A of the Social Security Act and authorized in Virginia by Chapter 6 (§ 63.1-86 et seq.) of Title 63.1 of the Code of Virginia. This program provides benefits to needy children who are deprived of parental support or care.

"Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP)" means the program authorized in § 407 of the Social Security Act which provides aid to dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agency" means a local department of social services/welfare.

"At-Risk Child Care" means the federal allocation to states from Title IV-A that provides for subsidized child care to eligible low-income working parents.

"Child Day Care and Development Block Grant" means the federal block grant for day care that was authorized under the Development Block Grant Act of 1990, § 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The purpose of this block grant is to increase the availability, affordability, and quality of child care.

"Child day care services" means those activities that assist eligible families in the arrangement and purchase of day care for children.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Day care center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care; or (ii) 13 or more children at any location.

"Child protective services" means a specialize continuum of casework services to abused, neglected o

exploited children and [their] families. The focus of the services is identification, assessment and service provision in an effort to prevent the maltreatment of children.

"Department" means the Virginia Department of Social Services.

"Deprivation" means, for purposes of eligibility for transitional child care, that the child is deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity or unemployment of a parent.

"Education leading to employment" means the pursuit of basic remedial instruction to achieve a basic literacy level, instruction in English as a second language, preparation for G.E.D. or adult education, the completion of high school, associate degree or certificate, work at the college level or bachelor degree from a college or university if the course of instruction is limited to a curriculum directly related to the fulfillment of an individual's educational goal to obtain useful employment in a recognized profession or occupation.

"Employment Services Program (ESP)" means a program operated by the Department of Social Services which helps AFDC, AFDC-UP and GR recipients in securing employment or the training or education needed o secure employment as required by § 63.1-133.12:1 of the Code of Virginia. This term may be used interchangeably with JOBS.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Federal Title IV-A funding" means funding provided to states from the federal government through the Social Security Act to fund the AFDC program, child day care for AFDC recipients, the transitional child day care program, and the At-Risk Child Care program.

"Fee system" means the program that provides child day care subsidy to low-income parents from the At-Risk Child Care funding and from the Child Care and Development Block Grant funding.

"FSET" means Virginia's Food Stamp Employment and Training Program, a program to provide non-AFDC able-bodied recipients of food stamps with employment and training.

"Full-time employment" means regularly scheduled activities that engage a participant in employment for 30 or more hours per week.

"Good cause" means a valid reason why an unemployed parent in a two-parent household cannot provide the needed child day care. The rationale for the agency's decision [finding good cause] must be documented in the case record.

"Income eligible" means that eligibility is based on income and determined by measuring the family income and size against the state median income chart.

"In-home day care provider" means a person who is responsible for the supervision and care of children in the child's own home.

"IV-A earned income disregard" means the method by which the cost of child day care is handled in determining eligibility for and the amount of the benefit for working applicants and recipients of AFDC.

"JOBS" means the Job Opportunities and Basic Skills Training Program for AFDC, General Relief, and AFDC-UP recipients effective October 1, 1990. This term may be used interchangeably with ESP, the Employment Services Program.

"Job search" means an activity whereby participants are required to make a certain number of employer contacts a week for a specific length of time.

"Market rate" means the 75th percentile of the range of costs in a community for a particular type of child day care.

"On-the-job training" is employment-related training provided by the employer.

"Parent" means primary adult caretaker or guardian of a child.

"Parental access" means that parents may visit the day care setting at any time their child is in care.

"Part-time employment" means any regularly scheduled activity that engages a participant in employment for a minimum of eight hours but less than 30 hours per week.

"Postsecondary education" means any course of instruction beyond that of high school offered by an institution of higher education or a vocational school as determined by the Secretary of Education to meet the Higher Education Act of 1965.

"Provider" means an individual, agency or organization operating a child day program.

"Purchase of Service Order" means a form sent to a vendor to authorize the delivery of services to a client.

"Regulation" means a process by which a child day care provider becomes federally approved, state licensed, city approved, county approved, local agency approved, or has met the requirements of Small Family Child Care Home Voluntary Registration. Providers who meet these

requirements shall be referred to as regulated providers. [~~*Effective October 1, 1993, religiously exempt centers will be considered regulated.*~~]

"Resource and referral services" means provision of support, education and assistance for parents in choosing child care. These services are sponsored by a variety of agencies, and often include assessment of the need for child care in a community, collection and maintenance of information about child care needs and issues, efforts to improve the quality of child care in the community through the provision of training and support for providers, and efforts to increase the supply of child care in the community through recruitment and technical assistance to potential providers.

"Satisfactory progress" means that the participant in any educational or training activity is meeting, on a periodically measured basis of less than one year such as a term or quarter, a consistent standard of progress based on written policy developed by the educational institution or training agency and approved by the IV-A agency.

"Service plan" means the written, mutually agreed upon course of action determined by the parent and service worker.

"Special needs child day care" means care provided to children with diagnosed physical, mental or emotional problems such as learning disabilities, behavior disorders, or inability to adjust with the family and peers; children with developmental disabilities, atypical development, or deficit in social functioning.

"State median income (SMI)" means the level of income by family size which represents the midpoint of income levels in Virginia.

"TRADE," also called Project TRADE, is a work supplementation program in ESP to develop and subsidize jobs for AFDC recipients as an alternative to aid.

"Training leading to employment" means the development of specific work attitudes, behaviors, or skills leading to job readiness as well as the development of specific technical or vocational skills that lead to employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

"Transitional child day care services" means the day care services (up to 12 months) for which certain former recipients of AFDC are eligible.

"Unregulated provider" means any child day care provider who is not federally approved, state licensed, city approved, county approved, local agency approved, or registered under the Voluntary Small Family Child Care Home Registration program, and is not required to be regulated. [~~*Effective October 1, 1993, religiously exempt centers will be considered regulated.*~~]

"USDA Child and Adult Care Food Program" means the United States Department of Agriculture program to reimburse child care providers for nutritious meals and snacks served to children in care while parents work.

"Vendor" means a provider who can sell services.

"Voluntary Small Family Child Care Home Registration" means the procedures by which a small family day home becomes state registered on a voluntary basis using approved standards. Providers registered with this program are considered to be regulated.

"Work experience" means unpaid job training with clearly defined duties at a well-supervised worksite.

PART II.
POLICY.

Article 1.
Child Day Care Programs and Families to be Served.

§ 2.1. Families and children to be served.

Child day care services shall be provided for eligible families with children who need day care and who are under age 13, or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision. Day care sha not be purchased for children who are eligible to atten kindergarten or for older children during that portion of a day when appropriate public education is available unless there are reasons the children must be out of school.

§ 2.2. Recipients of Aid to Families with Dependent Children (AFDC); income eligible recipients.

A. If there is a need for day care and all eligibility requirements are met, recipients of AFDC are eligible for child day care services if both the child receiving day care and the parent/caretaker are on the AFDC grant, or if the child would have been in the public assistance unit were it not for the receipt of SSI or foster care payments.

1. AFDC/working. Children in an AFDC public assistance unit are entitled to necessary child day care services to enable an AFDC eligible family member to work.

2. AFDC education/training. To the extent of available funding, children in an AFDC public assistance unit are eligible for necessary child day care services to enable an AFDC eligible family member to participate in education/training.

B. Child day care subsidy for income eligible parents shall be available on a sliding fee scale basis.

1. Transitional child day care services. Parents are entitled for up to 12 consecutive months of child da care if they have received AFDC, are found to b

income eligible, and meet the following criteria:

a. The family ceased being eligible for AFDC as a result of increased hours or income from employment.

b. The family must have received AFDC for at least three of the six months immediately preceding the first month of ineligibility for AFDC benefits.

c. The family requests transitional child day care benefits.

2. Fee system child day care services.

a. Fee System/At-Risk. To the extent of available funding, the Fee System/At-Risk Program shall be used to provide child care subsidies to income eligible clients who are employed.

b. Fee System/Block Grant. To the extent of available funding, the Child Care and Development Block Grant shall be used to provide child care subsidies to income eligible clients who are employed, in education/training programs, or receiving child protective services.

3. Food stamp recipients. To the extent of funding, child day care shall be made available for children of recipients of food stamps who are participating in Virginia's Food Stamp Employment and Training Program [~~*at a cost of up to the federally allowed maximum of $160 per month per dependent*~~] .

§ 2.3. Good cause/two-parent households.

In two-parent households where one parent is unemployed, there shall be good cause why that parent cannot provide the needed child care before payment for child day care will be made.

Article 2.
Provider Requirements.

§ 2.4. Degree of regulation required.

Providers of services funded from the AFDC/Working, AFDC Education/Training, Transitional, Fee System/At-Risk and FSET child day care programs may be regulated or unregulated. Unregulated providers are legally exempt from regulation based upon the number and age of children in care. Providers funded through the Fee System/Block Grant program must be regulated, except grandparents, aunts and uncles [*who are not otherwise subject to regulation*] .

§ 2.5. Requirements for unregulated providers.

A. When parents choose an unregulated provider (unless the provider is a grandparent, aunt or uncle not otherwise subject to regulation), the local department, the parent, and the provider shall work together to assist the provider in meeting basic health and safety requirements. The local department shall provide the parent with information on how to choose and monitor quality child care, and shall assist the provider to secure for the provider, all adults living in the household and all assistants:

1. A state criminal history record check,

2. A child protective services check, and

3. A tuberculosis test.

For in-home care, only the provider is required to obtain the above clearances.

B. The parent shall also be given a health and safety checklist by the agency. The parent shall give the checklist to the provider and participate in its completion. The checklist must be signed by both the parent and the provider. It will be the responsibility of the provider to return the completed checklist and all of the clearances to the local department and payment cannot be made until all required materials have been submitted. Unregulated providers must be at least 18 years of age.

Use of an unregulated provider must be denied if the State Criminal History Record Check shows that the person checked has been convicted of a barrier crime, if the Child Protective Services check reveals that the person checked is in the Central Registry as "Founded" or "Reason to Suspect," if the result of the tuberculosis test shows that the person tested is not free of tuberculosis in a communicable form, or if the health and safety checklist is returned incomplete.

§ 2.6. Complaints in the day care setting.

All complaints regarding possible child abuse or neglect occurring in a child day care setting must be referred to the child protective services unit at the local agency serving the area where the day care service is located. Information regarding the complaint shall be shared with the worker responsible for licensure or approval. All other complaints shall be referred to the approving authority.

Article 3.
Determination of Services to be Provided.

§ 2.7. Case management: assessment; reassessment; termination/after care services; waiting lists.

A. Parents who request day care services shall be required to sign a service application and cooperate with an assessment by the local agency.

1. Service plan. A written service plan shall be completed for every child day care case. If parents are active with the Employment Service Program, the ESP/JOBS Employability Plan or the ESP/JOBS

Activity and Service Plan may serve as the service plan.

2. Selection and monitoring of provider. The parent shall receive child day care resource and referral services to assist in the process of selecting a provider who will meet the needs of the children.

a. Agencies shall not establish policies that limit parental choice of providers. Parents may choose either child day centers, family day homes or in-home care. Unless there are extenuating circumstances, agencies shall purchase only the amount of child care required to support the approved activity.

b. Providers shall afford parents unlimited access to their children.

c. A child's relative may be a child day care provider, as long as the individual is not a part of the public assistance unit or legally responsible for the children needing care.

3. Parental responsibilities. Once eligibility is determined, parents shall be informed as to whether their full costs of child day care will be paid or whether they will be required to pay a fee, and, if so, the amount of that fee. It is the parent's responsibility to pay all fees owed directly to the provider. Parental failure to pay fees may result in ineligibility for services.

Parents shall be informed of their responsibility to report within 10 days to the local agency changes in choice of providers, family size, income, or any other changes that could affect their eligibility for services. Parents receiving services from the Division of Child Support Enforcement shall cooperate with that division [~~*except for good cause*~~] .

B. Parents and providers shall cooperate with the local agency, which shall make a direct contact at least quarterly with a member of the case household or the provider. The service worker shall evaluate, at least quarterly, whether the child day care services authorized are meeting the needs of the child and parent.

C. Agency termination of child day care services shall be planned jointly with the parent and the provider. The agency shall determine if continued services are needed and assist the family with appropriate referrals.

Adequate documentation supporting the reasons for termination shall be filed in the case record. If the locality proposes to deny, discontinue, terminate, or reduce child day care benefits, a written Notice of Action (#032-02-103/2) or letter must be sent to the parent at least 10 days in advance of the date the action is to become effective. If the parent disputes this decision, they are entitled to a fair hearing.

D. In any of the nonentitlement child day care programs, it may become necessary to place a family on a local agency waiting list. Therefore, local agencies shall have a waiting list policy for these day care funding sources. The local agency shall add the parent's name to a waiting list upon request. Service by date of request is an acceptable means of administering a waiting list. Any other proposed policy for a waiting list, such as by degree of need or at-risk status, shall be sent to the regional office of the department for approval prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly. [*The local department shall update each waiting list at least annually.*]

§ 2.8. Types of payment.

Parents may choose whether the agency will make payment for child day care services by means of direct payment to the provider or by reimbursement to the parent.

For the reimbursement method, the parent must provide documentation of adequate income or resources that would enable them to pay the provider prior to seeking reimbursement. Parents will receive reimbursement when they submit proper documentation and receipts to the agency.

AFDC recipients who are working may choose to tak the IV-A earned income disregard for child day care expenses, whether the provider selected is regulated or unregulated.

§ 2.9. Determining payment amount.

Payment rates shall be determined as follows:

1. Market rates. The department shall establish local market rates for child day care for all localities in the state by type of care. Agencies shall pay the rates and fees providers charge the general public or a negotiated rate. The payment shall not exceed the local market rate for a particular type of care. For special needs children, 100% of the cost of care may be paid, even if this exceeds the established market rate. Agencies shall not establish their own maximum monthly rates of pay.

Parents who choose to place a child in a facility whose rate is above the local market rate shall pay the additional amount themselves, unless the agency elects to pay the additional amount out of local only funds.

2. Unit price. The unit price of service shall be based on a week or less. Rates paid will be based on provider enrollment and attendance practices and department payment policies.

With the exception of a single annual registration fe

the total cost of care, including special programs, activities fees and transportation, shall not exceed the local market rate and shall be identified and entered on the Purchase Order as one day care cost. When a single annual registration fee is not included in the rate charged by the provider, it shall be paid by the agency separately.

Transportation services shall be paid using day care funds only when the transportation services are provided by the day care provider.

3. Optional payments. Child day care may be purchased if child care arrangements would otherwise be lost for up to two weeks prior to the start of employment or training and for up to one month during a break in employment or training if a subsequent activity is scheduled to begin within that period. Child day care may also be purchased if the parent is ill or incapacitated, or if the child is absent from care for up to four weeks for justifiable reasons as set forth in the Service Plan.

4. Beginning date of service payment. The beginning date of service payment authorization shall be:

a. The date the application/request for service is received in the agency if the client/family is determined eligible within 45 days; or

b. If determination is made more than 45 days after the application/request is received, services may begin only on the date eligibility is determined.

For the Transitional Child Day Care Program, payment shall be made retroactive to the date of eligibility (the month following the loss of AFDC) if the parent has requested the service, has proper receipts for day care paid, and has proof of employment.

5. Sliding fee scale. Child day care services shall be available to income eligible [~~*and transitional*~~] *recipients with parental copayments based on a sliding fee scale.* [~~*To the extent of*~~ *Within*] *available funds localities shall serve eligible families who earn 50% or less of the state median income (SMI). Localities* [~~*can*~~ *may*] *opt to serve families who earn up to 75% of the state median income with federal and state funds, and above 75% with local funds.*

[*Unless a local alternative scale is approved,*] *the sliding fee scale established by the State Board of Social Services shall be used statewide for determining fees owed by parents under the Transitional and Fee System Programs. Fees will be 10% of* [~~*the*~~] *gross* [~~*taxable*~~] *income with a $25 minimum monthly copayment* [*for customers with incomes equal to or less than 60% of SMI. Customers with incomes greater than 60% of SMI shall pay a fee of 15% of income*] . *All parents with income receiving sliding fee scale subsidy must contribute towards the cost of their child day care.* [*Alternative fee scales must be approved by the department and the local board.*]

Localities may limit receipt of Fee System Program subsidies to a maximum of five years.

VA.R. Doc. No. R94-1016; Filed May 25, 1994, 11:18 a.m.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
CHILD DAY CARE

CHILD DAY CARE PROVIDER RATE VERIFICATION

PART I

Name _____ Telephone _____

Address _____

Hours of Operation _____ Days of Operation _____

PART II DESCRIPTION OF SERVICES

(1) Service: _____

Unit Price (D, W, M) _____

(2) Service: _____

Unit Price (D, W, M) _____

(3) Service: _____

Unit Price (D, W, M) _____

PART III

Signature of Provider _____ Date _____

PART IV OFFICIAL USE ONLY

Regulated ☐ Applicable Market

Un-Regulated ☐ Rate(s) (1) _____

(2) _____

(3) _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
CHILD DAY CARE

CHILD DAY CARE FEE PAYMENT AGREEMENT

PART I — General Information (To Be Completed by Parent/Caretaker)

Parent/Caretaker _____ Home Telephone Number _____

Address _____ City, State, Zip _____

Children in Care:

1 _____ 3 _____ 5 _____

2 _____ 4 _____ 6 _____

PART II — Agreement by Parent/Caretaker

I have been determined eligible for day care financial assistance by the

_____
Local Department of Social Services

I agree to pay a monthly fee of _____ to (provider name) _____ for the provision of child day care services for the child(ren) listed above. I agree that this fee payment is due on (date) _____ of each month unless other arrangements have been made with my day care provider. I understand that if my fee is not paid as per this agreement my day care provider may refuse to accept my child(ren) into care until all fees are paid or my provider and I agree to a repayment plan.

Signed _____ Date _____

PART III — Agreement by Day Care Provider

I agree to accept the stated fee amount for the provision of day care services per the agreement in Part II. I will bill the local department of social services for the remainder of my monthly day care charge following the contract provided by the local department of social services. I further agree to notify the department of social services if the parent/caretaker fails to make the payment as required by Part II of this agreement.

Signed _____ Date

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

CHILD DAY CARE

Case Name _____ Case #_____ Date _____

CHILD DAY CARE FEE SYSTEM WORKSHEET

Number in Family Unit _____	
Gross Monthly Income = A	A =
(TAKE A TO FEE CHART) Percentage of income family pays as fee = B	B =
Amount family pays as fee = C Multiply family montly income by B A x B = C	C =

032-02-093/1 (5/93)

HEALTH AND SAFETY CHECKLIST FOR UNREGULATED PROVIDERS

*** This Checklist in no way constitutes a license or certificate**

Return to:
Local Department of Social Services Mailing Address

Worker Name _____ Phone _____

INSTRUCTIONS:

The parent and the child care provider must fill out the entire form together in the home where care is provided.

Read statements in Sections I and II. If the statement is true, put a check mark in the "yes" column. If the statement is false, put a check mark in the "no" column. If the parent does not agree with any of the responses to the statements, she or he should list the number of those statements in Section V.

The provider must send the completed form to the service worker in the local department of social services. After receiving all necessary clearances and the completed Health and Safety Checklist, the worker will send a copy of the checklist to the parent and to the provider for their records.

Section I: To be filled out for Family Day Care Home Providers and In-Home Providers

HEALTH AND SAFETY STATEMENTS	Yes	No
1. If/when I drive the children in a motor vehicle, I make sure the vehicle meets the rules set by the Division of Motor Vehicles, such as: • Car has a current license plate • Car has safety inspection sticker • Car has local sticker • I have insurance for the car • I have a current driver's license		
2. Any motor vehicle used has required seat belts and car seats.		
3. I have the names and phone numbers of one or more persons in addition to the parent(s) who may be contacted in case of emergency.		

1

032-02-001 (11/93)

Section II: To be filled out for Family Day Care Home Providers

HEALTH AND SAFETY STATEMENTS	Yes	No
4. I have a working telephone, or can easily get to one.		
5. All areas of my property where the children are allowed are free of obvious dangers (for example, electrical outlets are covered).		
6. There are working smoke detectors in the areas where children are in care.		
7. My home is in good repair, clean and free of trash.		
8. I keep medicines and cleaning products away from food and I store them in places where children cannot reach them.		
9. If there are guns and ammunition on my property, I keep them unloaded, separated, and in a locked place.		
10. I have a first aid kit available.		
11. I have a working flashlight available.		
12. I wash my hands and the children's hands with soap before meals, after using the bathroom, and after diapering.		
13. I serve healthy meals and snacks to children.		
14. I make sure drinking water is available for the children.		
15. My home is not infested with insects or rodents.		
16. If there are dogs or cats on my property they have up-to-date rabies shots.		
17. I make sure pets are kept from areas where I prepare food.		

Section III: Assistants and Other Adults in the Home

Name _____ Social Security No. _____

Address (If other than the provider) _____

_____

Name _____ Social Security No. _____

Address (If other than the provider) _____

_____

Section IV: TO BE SIGNED BY PROVIDER

I have discussed the following with the parent:

I am not required by state law or local ordinance to be regulated.

I am at least 18 years of age.

I understand that failure to meet the requirements for unregulated providers will mean the local agency cannot pay me to provide child care.

I agree that I, my assistant if I have one, and other adults living in the household shall submit the results of a physical and/or mental health examination when requested by the agency if there is evidence of a problem.

I have a completed emergency medical release form permitting access to emergency care for each child receiving care paid by the local agency.

I have an up-to-date record of immunizations (shots) for each child receiving care paid by the local agency when care is provided outside the child's home.

I allow parents and agency staff to visit the day care setting at any time the child is in care.

I will not allow the use of alcohol or unlawful drugs by anyone in the home while children are in care.

I do not use physical punishment or any methods of discipline that embarrass children. I discuss with parents methods of discipline to be used.

All the information submitted above is true to the best of my knowledge.

Name (Print)_____ Date_____

Signature_____ Social Security No._____

Address_____

County/City_____ Phone No._____

Rates Charged $_____ Per Week / Day / Hour (circle one)

Section V: TO BE SIGNED BY PARENT

I have discussed the following with the provider and the agency:

I have chosen to use an unregulated provider.

I understand I have the right to visit my child at any time while in day care.

I have discussed with the provider the types of discipline to be used with my child and we agree that no physical punishment will be used.

I have discussed with the provider whether smoking is allowed in the provider's home. I am aware of the dangers to children of second hand smoke.

I do not agree with the responses given to the statement(s) in Sections I and II.

#_____*

All the information submitted above is true to the best of my knowledge.

Name (Print)_____

Signature_____ Date_____

Address_____

_____

Phone No. (Home)_____ (Work)_____

Local Agency Use Only:

RECEIVED		PAYMENT FOR CARE	
Health and Safety Checklist	_____	Date Payment Approved	_____
Criminal Records Check	_____	Date Payment Denied	_____
CPS Check	_____		
Tuberculosis Test	_____	Worker Signature	_____

*Approval for payment in no way constitutes regulation of this provider. This document is not a license or certification.

4

Day Care Child's Emergency Medical Authorization

CHILD'S MEDICALLY DIAGNOSED ALLERGIES OR CHRONIC CONDITIONS ETC

CHILD'S MEDICAL NUMBER

OTHER INSURANCE ☐ YES ☐ NO | IF YES, COMPANY

INSURANCE NUMBER

The Parent/Guardian authorizes immediate medical care and consents to the hospitalization of, the performance of necessary diagnostic tests upon, the use of surgery on, and/or the administration of drugs to his/her child or ward if an emergency occurs when he/she cannot be located immediately

SIGNATURE OF PARENT OR GUARDIAN | DATE

NOTE: THIS FORM IS TO BE KEPT BY THE PROVIDER AND IS TO BE TAKEN TO THE DOCTOR OR TREATMENT FACILITY IN CASE OF EMERGENCY.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-22. Virginia Pollution Abatement General Permit for** *Concentrated or* **Intensified** *Confined* **Animal Feeding Operations ~~of Swine, Dairy, and Slaughter and Feeder Cattle~~ .**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Date: July 13, 1994.

Summary:

The Virginia Pollution Abatement (VPA) permit program authorizes the pollutant management activities at concentrated and intensified confined animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycling and the land application of wastewater and sludges. All pollutant management activities are required to maintain no point source discharge of pollution to state waters except in the case of a storm event greater than the 25-year, 24-hour storm. An intensified animal feeding operation is one at which less than or equal to 1,000 animal units but more than 300 animal units are confined. A concentrated animal feeding operation is one at which more than 1,000 animal units are confined.

The purpose of this regulation is to authorize the management of pollutants or activities at concentrated or intensified confined animal feeding operations through the adoption of a general permit. The final regulation revises the procedures for submitting a registration statement to obtain coverage under the general permit, establishes the standard criteria for the design and operation of the treatment works for waste storage, treatment or recycle and for the land application of wastewater or sludges, and minimum monitoring and reporting requirements.

The 1994 session of the General Assembly amended the State Water Control Law regarding general permits for confined animal feeding operations. This legislation combined intensified and concentrated animal feeding operations into a single classification of confined animal feeding operations with 300 or more animal units utilizing a liquid manure collection and storage system. The legislation also set the permit term for confined animal feeding operations at 10 years. When the new legislation becomes effective on July 1, 1994, technical changes will be made to the VPA General Permit to provide for a VPA General Permit for Confined Animal Feeding Operations with a term of 10 years.

The Department of Environmental Quality will administer this program. Upon receipt of a complete registration statement, the applicant will be notified of coverage and will receive a copy of the general permit which will authorize the pollutant management activities at concentrated and intensified confined animal feeding operations.

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, Regulatory Coordinator, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 762-4378. There may be a charge for copies.

VR 680-14-22. Virginia Pollution Abatement General Permit for Concentrated or Intensified Confined Animal Feeding Operations.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (VR 680-14-01) unless the context clearly indicates otherwise, except that for the purposes of this regulation.

[*"Confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:*

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.]

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Permittee" means the owner whose [*concentrated or*] *intensified* [*confined*] *animal feeding operation* [~~*for swine, dairy or slaughter and feeder cattle*~~] *is covered under this general permit.*

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

§ 2. Purpose.

This general permit regulation governs the pollutant

management activities of animal wastes at intensified [confined] animal feeding operations [~~for swine, dairy, and feeder and slaughter cattle~~ having 300 or more but less than 1,000 animal units and concentrated confined animal feeding operations having 1,000 or more animal units utilizing a liquid manure collection and storage system] . These [concentrated or] intensified [confined] animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of wastewater or sludges.

§ 3. Delegation of authority.

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

§ 4. Effective date of the permit.

This general permit will become effective on [~~XXX~~ July 13, 1994] . This general permit will expire [five years from the effective date for concentrated confined animal feeding operations and] 10 years from the effective date [for intensified confined animal feeding operations] . Any covered owner is authorized to manage pollutants, that are not point source discharges to state waters, under this general permit upon compliance with all the provisions of §§ 5 and 6 and the receipt of this general permit.

§ 5. Authorization to manage pollutants.

Any owner governed by this general permit is hereby authorized to manage pollutants at [concentrated or] intensified [confined] animal feeding operations [~~for swine, dairy, and slaughter and feeder cattle~~] provided that the owner files [~~and receives acceptance, by the director, of~~] the registration statement of § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the Permit Regulation. Currently permitted operations may [submit a registration statement for operation under the general permit and] be authorized under this general permit [~~after an existing permit expires~~] provided that the criteria of the general permit are met.

2. The operation of the facilities of the owner shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater except in the [~~event~~ case] of a [storm event greater than the] 25-year, 24-hour [~~or greater~~] storm [~~event~~] . Domestic sewage or industrial waste shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Industrial Waste-No Discharge (IW-ND) Certificate must attach to the registration statement [~~notification from the governing body of the county, city or town in which the activities are to take place that the location and operation of the facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq.) of Title 15.1 of the Code of Virginia.~~ the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.]

4. A Nutrient Management Plan (NMP) for the facility must be approved by the Department of Conservation and Recreation (DCR) [; ~~Division of Soil and Water Conservation (DSWC)~~] prior to the submittal of the registration statement. The owner of the pollutant management activities shall attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.

Receipt of this general permit does not relieve any owner of the responsibility to comply with any other [applicable] federal, state or local statute, ordinance or regulation.

§ 6. Registration statement.

The owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at [concentrated or] intensified [confined] animal feeding operations [~~for swine, dairy, and slaughter and feeder cattle~~] in accordance with this regulation.

Any owner proposing a new pollutant management activity shall file a complete registration statement [~~at least 30 days prior to the date planned for commencing erection or construction of new processes at any site. There shall be no operation of said facilities prior to coverage under a permit~~] . Any owner with an existing pollutant management activity covered by an individual VPA permit who is proposing to be covered by this general permit shall file a complete registration statement [~~at least 180 days prior to the expiration date of the individual VPA permit~~] .

The required registration statement shall be in the following form:

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA POLLUTION ABATEMENT
GENERAL PERMIT REGISTRATION STATEMENT
FOR [CONCENTRATED OR] INTENSIFIED [CONFINED] ANIMAL FEEDING OPERATIONS [~~FOR SWINE, DAIRY, AND SLAUGHTER AND FEEDER CATTLE~~]

1. Facility Name:

Address:

City:

State: Zip Code:

2. Owner Name:

Address:

City:

State: Zip Code:

Phone:

3. Operator Name:

Address:

City:

State: Zip Code:

Phone:

Facility Contact:

Phone:

Best Time to Contact (day time):

4. Does this facility have an existing VPA permit or IW-ND Certificate?

Yes/No

If yes, list the existing VPA Permit Number or IW-ND Certificate Number:

5. Indicate the maximum number and average weight of the type(s) of animal which will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Dairy Cattle		
Slaughter and Feeder Cattle		
Swine		
[other]		

[~~*6. Indicate the number and type of waste storage facilities at the site.*~~

~~No.~~	~~Type~~	~~Existing~~	~~Proposed~~
	~~Earthen storage basin~~		
	~~Clay Lined~~		
	~~Synthetic Liner~~		
	~~Concrete Tank~~		
	~~Steel Tank~~		

~~*7. List any waste other than manure (e.g., wash down, dairy parlor waste or sewage) which may be discharged to the storage facility:*~~

~~*8. Will any of the waste generated at your facility be land applied?*~~

~~*Yes/No*~~

~~*9. Are all the land application sites owned by the applicant?*~~

~~*Yes/No*~~

~~*If No, complete page 4 of this Registration Statement for each nonapplicant land owner on whose property animal waste from this facility will be applied.*~~

[~~*10.*~~ *6.*] *The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or IW-ND Certificate must attach to the registration statement* [~~*notification from the governing body of the county, city or town in which the activities are to take place. that the location and operation of the facility are consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq.) of Title 15.1 of the Code of Virginia.*~~ *the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.*]

[~~*11.*~~ *7.*] *The owner of the pollutant management activities must attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.*

[~~*12.*~~ *8.*] *Certification:*

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

Print Name:

Title:

Signature:

Date:

[~~AUTHORIZATION TO LAND APPLY WASTE~~

~~(Land Owner Must Sign and Date This Approval)~~

~~As land owner, I authorize..... to land apply animal waste to my property in accordance with the requirements of the VPA General Permit for Intensified Animal Feeding Operations. This authorization will remain in effect until such time as I notify the Department of Environmental Quality, Water Division in writing that this authorization has been withdrawn.~~

~~PRINT NAME:~~

~~SITE LOCATION:~~

~~PHONE:~~

~~DATE:~~

~~SIGNATURE:~~]

§ 7. General permit.

Any owner [~~whose~~ who submits a complete] registration statement [~~is accepted by the director~~] will receive the following general permit and shall comply with the requirements therein and be subject to the permit regulation.

General Permit No.: VAG000xxx

Effective Date:

Expiration Date [for Intensified Operations] :

[Expiration Date for Concentrated Operations:]

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR [CONCENTRATED OR] INTENSIFIED [CONFINED] ANIMAL FEEDING OPERATIONS [~~FOR SWINE, DAIRY, AND SLAUGHTER AND FEEDER CATTLE~~]

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of intensified [confined] animal feeding operations [~~for swine, dairy, and slaughter and feeder cattle~~ having 300 or more but less than 1,000 animal units and concentrated confined animal feeding operations having 1,000 or more animal units utilizing a liquid manure collection and storage system] are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting data submitted to the Department of Environmental Quality, Water Division, this cover page, Part I [- ~~Management and Monitoring Requirements~~] , Part II [- ~~Monitoring and Reporting~~] , and Part III [- ~~Management Requirements~~] , as set forth herein.

PART I.
[~~MANAGEMENT AND MONITORING REQUIREMENTS.~~]

A. Management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the permitted site.

2. Groundwater monitoring wells shall be installed at new earthen waste storage facilities [~~located east of Interstate 95 including the eastern shore prior to any waste being placed in the storage facility. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility. One data set shall be collected from each well prior to any waste being placed in the storage facility.~~ constructed to an elevation below the seasonal high water table or within one foot thereof.] Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located [~~in the state~~ relative to the seasonal high water table] .

4. In accordance with A 2 and A 3 above, the ground water shall be monitored by the permittee at the monitoring wells as specified below:

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	[~~1/6 months~~ 1/3 years]	Measured
Ammonia Nitrogen	NL	mg/l	[~~1/6 months~~ 1/3 years]	Grab

Nitrate Nitrogen	NL	mg/l	[~~1/0 months~~ 1/3 years]	Grab
pH	NL	SU	[~~1/0 months~~ 1/3 years]	Grab
Conductivity	NL	umhos/cm	[~~1/0 months~~ 1/3 years]	Grab

NL = No limit, this is a monitoring requirement only.

[~~5. The static water level shall be measured prior to bailing well water for sampling. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.~~]

[~~6.~~ 5.] *Soil monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.*

[~~7.~~ 6.] *The soils at the facility shall be monitored by the permittee as specified below:*

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS Frequency	Sample Type
pH	NL	SU	[~~1/year~~ 1/3 years]	Composite
Phosphorus	NL	ppm	[~~1/year~~ 1/3 years]	Composite
Potash	NL	ppm	[~~1/year~~ 1/3 years]	Composite
Calcium	NL	ppm	[~~1/year~~ 1/3 years]	Composite
Magnesium	LN	ppm	[~~1/year~~ 1/3 years]	Composite
Nitrate	LN	ppm	[~~1/year~~ 1/3 years]	Composite

NL = No limit, this is a monitoring requirement only.

[~~8. Soil monitoring should be conducted at a depth of between 0-6". The Nitrate test is required only on those sites planted in corn or small grains at a soil depth of 0-12".~~]

[~~9.~~ 7.] *Waste monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.*

[~~10.~~ 8.] *The waste at the facility shall be monitored by the permittee as specified below:*

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	ppm	1/year	Composite
Ammonia Nitrogen	NL	ppm	1/year	Composite
Total Phosphorus	NL	ppm	1/year	Composite
Total Potassiumv	NL	ppm	1/year	Composite
Calcium	NL	ppm	1/year	Composite
Magnesium	NL	ppm	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

[~~11.~~ 9.] *All monitoring data collected as required by Part I A shall be maintained on site in accordance with Part II C* [~~and submitted upon request and during the reissuance process with the registration statement~~] .

[*10. The following recommendations will assist the permittee in performing proper monitoring. The Department of Environmental Quality may be contacted for additional guidance on monitoring procedures.*

a. A minimum of one up gradient and one down gradient well should be installed at each nev earthen waste storage facility.

b. One data set should be collected from each well prior to any waste being placed in the storage facility.

c. The static water level should be measured prior to bailing well water for sampling.

d. At least three well volumes of groundwater should be withdrawn immediately prior to sampling each monitoring well.

e. Soil monitoring should be conducted at a depth of between 0-6 inches.

f. The nitrate test should be conducted at a soil depth of 0-12 inches on those sites planted in corn or small grains.]

B. Other requirements or special conditions.

[~~1. There shall be no discharge of pollutants to surface waters from this operation except in the case of a 25-year, 24-hour or greater storm event. The operation of the facilities of the owner permitted herein shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law.~~

~~2. Any and all product, materials, industrial waste, or other wastes resulting from the purchase, sale,~~

~~mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes, shall be handled, disposed of, or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters, except as expressly authorized.~~]

[~~3.~~ *1.*] *The* [~~waste storage facilities~~ *liquid manure collection and storage facility*] *shall be designed and operated to* [*(i)*] *prevent point source discharges of pollutants to state waters except in the case of a* [*storm event greater than the*] *25-year, 24-hour* [~~or greater~~] *storm* [~~event.~~ *and (ii) provide*] *adequate waste storage capacity* [~~must be present~~] *to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.* [~~The minimum storage capacity requirements shall be based upon the approved nutrient management plan.~~]

[~~4.~~ *2.*] *New waste storage facilities shall not be located on a* [*100-year*] *floodplain unless protected from inundation* [~~or damage~~] *by a 100-year frequency flood event.*

[~~5.~~ *3.*] *New earthen waste storage facilities shall* [~~be constructed with a 2-foot separation distance between the bottom of the storage facility and the seasonal high water table.~~ *include a properly designed and installed liner.*]

[~~6. For new earthen waste storage facilities, the soils used as lagoon liners shall be capable of achieving a maximum coefficient of permeability of 1 x 10-6 cm/sec or less throughout the impoundment sides and bottom after compaction at or up to 4 percent above the optimum moisture content to at least 95% Standard Proctor Density. Total soil liner thickness shall be one foot after compaction of two separate lifts of equal thickness. The final permeability rate shall be verified by a professional engineer or a soils laboratory. Should a synthetic liner be chosen, the liner thickness shall not be less than 20 mils and shall be compatible with the waste, and be appropriately protected from puncture both below and above the liner. Written certification ensuring lagoon liner integrity and proper installation shall be made, prior to the waste storage facility being placed in operation,~~ *Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. Proper installation shall be certified*] *by a liner manufacturer* [~~or~~ ,] *a professional engineer* [, *an employee of the Soil and Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, an employee of a soil and water conservation district with appropriate engineering approval authority, or other qualified individual*] *and shall be maintained on site.*

[*4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintaind at a level of at least two feet above the water table.*]

[~~7.~~ *5.*] *All waste storage facilities shall maintain* [~~a minimum freeboard of two feet at all times. Should the two-foot freeboard not be maintained, the permittee shall immediately notify the department describing the problem and the corrective measures taken. Within five days of the notification, the permittee shall submit a written statement of explanation and corrective measures.~~ *one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.*]

[~~8.~~ *6.* ~~The owner of a new animal feeding operation shall develop an Operations and Maintenance (O & M) Manual for the treatment works/pollutant management system permitted herein prior to operation of the system. The owner of an existing animal feeding operation shall develop the O & M Manual within 90 days of the date of coverage under this permit. The O & M Manual shall, at a minimum, contain the following information:~~ *All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment as appropriate.*]

[~~a. Introduction;~~

~~b. Waste treatment processes including storage, transmission and distribution system of the land application system;~~

~~c. Specific operation and maintenance information of each process discussed in item b above;~~

~~d. Schedules of operation and maintenance;~~

~~e. Sampling and testing protocols; and~~

~~f. Recordkeeping.~~

~~The permittee shall operate the treatment works/pollutant management system in accordance with the O & M Manual which becomes an enforceable part of the permit. Any changes in the practices and procedures shall be documented and made a part of the O & M Manual. The revised manual shall become an enforceable part of the permit. The O & M Manual shall be maintained on site and made available to department personnel upon request.~~]

[~~9.~~ 7.] *The "Nutrient Management Plan" (NMP) approved by the Department of Conservation and Recreation (DCR) shall be implemented, maintained on site and made available to department personnel upon request. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:*

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation [*and*] *assessment of soil types and potential productivities;*

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

[~~10. Animal waste/wastewater shall not be applied to soils which are saturated by previous precipitation events, or to ice or snow covered or frozen ground.~~

~~11. Wastewater shall not be applied by a spray irrigation system at rates that exceed 0.25 in/hr, one in/day and two in/week, unless alternate rates have been specified by the approved Nutrient Management Plan.~~

~~12. At no time shall animal waste/wastewater be surface applied by a spreader at a hydraulic loading rate greater than 14,000 gal/AC (0.5 inches depth) in a single application procedure unless alternate rates have been specified by the approved Nutrient Management Plan.~~

~~13. The application of animal waste together with any other source of Plant Available Nitrogen (PAN) shall not exceed the agronomic loading rate for the crops grown on each site in accordance with the approved Nutrient Management Plan. PAN calculations shall be made using the results from the most recent waste monitoring period or the facilities' long-term average waste monitoring results.~~]

[~~14.~~ 8.] *Buffer zones shall be maintained as follows:*

[~~a. Distance from improved roadways . . . 25 feet~~]

[~~b.~~ a.] *Distance from occupied dwellings 200 feet*
[*(unless the occupant of the dwelling signs a waiver of the buffer zone)*]

[~~c.~~ b.] *Distance from water supply wells or springs ..... 100 feet*

[~~d.~~ c.] *Distance from surface water courses*
(by surface application) ..... 50 feet
(by subsurface injection) ..... 25 feet

[~~e. Distance from property lines~~
~~(by surface application) ..... 25 feet~~
~~(subsurface injection) ..... 25 feet~~]

[~~f.~~ d.] *Distance from rock outcropping*
(except limestone) ..... 25 feet

[~~g.~~ e.] *Distance from limestone*
outcroppings ..... 50 feet

[~~h. Distance from artificial agricultural drainage ditches whose primary purpose is to lower the seasonal high groundwater table and where slopes are less than or equal to 2%~~
~~(surface applied) ..... 10 feet~~
~~(subsurface applied) ..... 5 feet~~

~~Application under this reduced buffer zone requirement shall be reported in the yearly summary report.~~]

[~~i.~~ f.] *Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.*

[~~15.~~ 9. ~~A yearly summary report shall be prepared for the previous calendar year and~~ *Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. These records shall be*] *maintained on site* [*for a period of two years after recorded application is made*] *and* [*shall be*] *made available to department personnel upon request.* [~~The report shall include:~~

~~a. A summary of the monitoring data results including waste, soil, and groundwater analyses.~~

~~b. A summary on the total animal waste (volume and loadings) land applied, both on and off site, during the year.~~

~~c. The yearly waste balance showing inputs to and drawdown from the storage facilities.~~

~~d. A summary of the agronomic practices which occurred during the preceding growing season including (but not limited to) the timing and number of crop cuttings, an estimate of total crop yield (tons or bushels/acre) removed from the site, any lime and fertilizer additions made to the site (type and quantities).~~

~~e. A listing of the average number of animals on site during the year.~~

~~f. A general statement of past system performance~~

~~and the status of the permitted facilities with regard to complying with the Virginia Pollution Abatement General Permit requirements.~~

~~16. A Facilities Closure Plan shall be developed prior to termination of the pollutant management activities covered under this permit. The plan shall incorporate:~~

~~a. The volume, percent solids, nutrient content, and other waste characterization information appropriate to the nature of the waste materials.~~

~~b. A listing of all waste products at the facility along with a description of procedures for removal, land application, or other proper disposal of the wastes.~~

~~c. Closure plans for all waste treatment, storage, and handling facilities. The Facilities Closure Plan shall be submitted to the department at least 90 days prior to implementation of the plan.~~]

PART II.
[~~*MONITORING AND REPORTING.*~~]

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR Part 136 [~~*(1992))*~~ *(1994))*] .

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation shall be retained on site for [~~*three*~~ *two*] *years from the date of the sample, measurement or report* [~~*or until at least one year after coverage under this general permit terminates, whichever is later*~~] *. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.*

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

[~~*E. Water quality monitoring.*~~

~~The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law or the board's regulations.~~

~~The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state representatives and shall be submitted with such frequency and in such detail as requested by the director.~~]

[~~*F.*~~ *E.*] *Reporting requirements.*

[~~*1. The permittee shall submit to the department results of the monitoring required in Part I A with the registration statement during the reissuance process.*~~]

[~~*2.*~~ *1.*] *If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department* [~~*with the project summary report*~~] *at least the following information:*

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

[~~3.~~ 2.] *The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part II F [~~2~~ 1] a-c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.*

If the department's regional office cannot be reached, the department maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made.

[~~G.~~ F.] *Signatory requirements.*

Any registration statement or certification required by this permit shall be signed as follows:

[~~1. Registration statement.~~]

[~~a.~~ 1.] *For a corporation, by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.*

[~~b.~~ 2.] *For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).*

[~~c.~~ 3.] *For a partnership or sole proprietorship, by a general partner or proprietor respectively.*

[~~2. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."~~]

PART III.
[~~MANAGEMENT REQUIREMENTS.~~]

A. Change in management of pollutants.

1. All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants. The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

2. The permittee shall promptly provide written notice of the following:

a. Any new introduction of pollutant(s), into treatment works or pollutant management activities which represents a significant increase in the management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works has the potential to discharge pollutants to state waters; and

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutant: being introduced into such treatment works by an

establishment, treatment works, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be managed at a pollutant management activity; and (iii) any additional information that may be required by the director.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.

b. The permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved Nutrient Management Plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Compliance with state law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation.

G. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to reregister.

If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

J. Right of entry.

The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the

presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

[~~*L. Public access to information.*~~

~~*All information pertaining to the permit process or in reference to any pollutant management activities shall be available to the public.*~~]

[~~*M.*~~ *L.*] *Permit modification.*

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When the level of management of a pollutant, not limited in the permit, exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

[~~*N.*~~ *M.*] *Permit termination.*

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

[~~*O.*~~ *N.*] *When an individual permit may be required.*

The director may require any permittee authorized to manage pollutants under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The pollutant management activities violate the terms or conditions of this permit;

2. When additions or alterations have been made to the affected facility which require the application of permit conditions that differ from those of the existing permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered by this permit which were not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

[~~*P.*~~ *O.*] *When an individual permit may be requested.*

Any permittee operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

[~~*Q.*~~ *P.*] *Civil and criminal liability.*

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

[~~*R.*~~ *Q.*] *Oil and hazardous substance liability.*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

[~~S.~~ *R.*] *Unauthorized discharge of pollutants.*

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

VA.R. Doc. No. R94-1017; Filed May 25, 1994, 11:24 a.m.

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all final regulations.

Title of Regulation: **VR 450-01-0081. Pertaining to Summer Flounder.**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1994.

Preamble:

This regulation establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota and trip limits, minimum size limits, and a recreational bag and season limit.

VR 450-01-0081. Pertaining to Summer Flounder.

§ 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.

B. This regulation amends VR 450-01-0081 which was promulgated by the Marine Resources Commission and made effective January 1, ~~1993~~ *1994* .

C. The effective date of this regulation is ~~January~~ ~~1~~ *May 1* , 1994.

§ 2. Purpose.

The purpose of this regulation is to reduce commercial and recreational fishing mortality in order to rebuild the severely depleted stocks of Summer Flounder.

§ 3. Commercial harvest quotas.

A. During the period of January 1, 1994, through December 31, 1994, commercial landings of Summer Flounder shall be limited to 3,411,000 pounds and shall be distributed as follows:

1. The commercial harvest of Summer Flounder from Virginia tidal waters for the period of January 1, 1994, through December 31, 1994, shall be limited to 300,000 pounds.

2. During the period of January 1, 1994, through March 31, 1994, landings of Summer Flounder harvested outside the Virginia shall be limited to 2,000,000 pounds.

3. During the period of April 1, 1994, through June 30, 1994, landings of Summer Flounder harvested outside of Virginia shall be limited to 200,000 pounds.

4. During the period of July 1, 1994, through September 30, 1994, landings of Summer Flounder harvested outside of Virginia shall be limited to 200,000 pounds.

5. During the period of October 1, 1994, through December 31, 1994, landings of Summer Flounder harvested outside of Virginia shall be limited to 711,000 pounds.

B. It shall be unlawful for any person to harvest for commercial purposes or to land Summer Flounder for sale after the commercial harvest or landing quota as described in subsection A of this section ~~;~~ has been attained.

§ 4. Commercial trip limitation.

A. During the periods (quarters) of January 1, 1994, through March 31, 1994, and October 1, 1994, through December 31, 1994, a commercial trip limit of 2,500 pounds of Summer Flounder harvested outside of, and landed in, Virginia shall be imposed, when it is projected that 85% of the quarterly quota has been taken.

B. During the period of April 1, 1994, through Septembe 30, 1994, a commercial trip limit of 2,500 pounds of Summer Flounder harvested outside of, and landed in, Virginia is imposed.

C. During the above periods, as described in subsections A and B of this section, it shall be unlawful for any person, fishing outside of Virginia waters, to land from a vessel any amount of Summer Flounder exceeding 2,500 pounds.

§ 5. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 13 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to, hook-and-line, rod-and-reel, spear and gig, shall be 14 inches, total length.

C. It shall be unlawful for any person to catch and retain possession of any Summer Flounder smaller than the designated minimum size limit ~~except as provided in subsection D of this section~~ .

~~D. The harvest of Summer Flounder by pound net may consist of up to 10%, by weight, of Summer Flounder less than 13 inches in length. It shall be unlawful for any person to possess Summer Flounder taken by pound net which consists of more than 10%, by weight, of Summe Flounder less than 13 inches in length. Whenever an~~

~~person has possession of more than 100 pounds of Summer Flounder harvested by pound net, a lot of 100 pounds may be separated by the Marine Patrol Officer from the whole quantity for the purposes of determining whether more than 10% are under the lawful size.~~

~~E.~~ *D.* Length shall be measured in a straight line from tip of nose to tip of tail.

§ 6. Daily bag limit.

A. It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, spear, gig or other recreational gear, or licensed for commercial hook-and-line fishing, to catch and retain possession of more than ~~10~~ *eight* Summer Flounder per day. Any Summer Flounder taken after the daily limit has been reached shall be returned to the water immediately.

B. The daily bag limit of Summer Flounder when fishing from a boat shall be equal to the number of persons on board multiplied by ~~10~~ *eight* . ~~Retention of the legal number of Summer Flounder is the responsibility of the boat captain or operator.~~

C. Charter, party and head boat captains or operators are ultimately responsible for the retention of the legal number of Summer Flounder.

§ 7. Recreational fishing season.

The open recreational fishing season shall be from May 1 through October 31, 1994. After October 31, 1994, it shall be unlawful for any person to harvest Summer Flounder unless that person possesses a commercial fisherman registration license and gear license.

§ ~~7.~~ *§ 8.* 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.

VA.R. Doc. No. R94-996; Filed May 16, 1994, 3:18 p.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

Title of Regulation: **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.**

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: May 10, 1994

VA.R. Doc. No. R94-1002; Filed May 13, 1994, 3:15 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Title of Regulation: **VR 240-03-2. Regulations Relating to Private Security Services.**

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: May 24, 1994

VA.R. Doc. No. R94-1006; Filed May 24, 1994, 3:05 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (REPEAL).**

Title of Regulation: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.**

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: May 25, 1994

VA.R. Doc. No. R94-1024; Filed May 26, 1994, 2:31 p.m.

BOARD OF NURSING

Title of Regulation: **VR 495-04-1. 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: May 25, 1994

VA.R. Doc. No. R94-1023; Filed May 26, 1994, 10:09 a.m.

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

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

† Designation Of Regional Solid Waste Management Planning Area

In accordance with the provisions of § 10.1-1411 of the Code of Virginia and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the director of the Waste Division of the Department of Environmental Quality intends to designate Accomack County and the Towns of Accomac, Belle Haven, Bloxom, Chincoteague, Hallwood, Keller, Melfa, Onancock, Onley, Painter, Parksley, Saxis, Tangier, and Wachepreague as a solid waste manangement region. The director has approved a comprehensive solid waste management plan for the area. Accomack County is the designated contact for implementation of the plan.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on June 30, 1994, to Anne M. Field, Department of Environmental Quality, 629 East Main Street, P. O. Box 10009, Richmond, VA 23240-0009, FAX (804) 762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the director of the Waste Division will notify the affected local governments of his designation of the region or of the need to hold a public hearing on the designation.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH

Maternal and Child Health Block Grant Application Fiscal Year 1994

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1994, the Maternal and Child Health Services Block Grant Application for the period October 1, 1994, through September 30, 1995, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

° preventive and primary care services for pregnant women, mothers and infants up to age 1

° preventive and primary care services for children and adolescents

° family-centered, community-based, coordinated care and the development of community-based systems of services for children with special health care needs

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of Section 505, Title V - Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 25 through June 24, 1994, for review and public comment on the Block Grant Application. Copies of the document will be available as of May 25, 1994, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Ms. Mary M. Carpenter at the following address; written comments must be addressed to Ms. Carpenter and received by June 24, 1994, at the following address:

Virginia Department of Health
Division of Women's and Infants' Health
1500 East Main Street, Room 136
Richmond, Virginia 23219-2448
(804) 786-5916
FAX (804) 371-6032

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following federal OSHA notice:

U. S. Department of Labor
Occupational Safety and Health Administration
29 CFR Part 1903

[Docket No. C-03]
Abatement Verification

AGENCY: Occupational Safety and Health Administration (OSHA)

ACTION: Notice of proposed rulemaking

SUMMARY: The Occupational Safety and Health Administration (OSHA) is developing a regulation requiring employers to certify abatement and submit abatement plans and progress reports as a result of OSHA citations. In addition, federal OSHA is proposing the placement of a tag on cited equipment to alert affected employees that a hazardous condition exists while abatement is being accomplished. Violation of the regulation would result in civil penalties as prescribed by section 17 of the Occupational Safety and Health Act of 1970. This notice invites interested parties to submit comments and recommendations on the issues detailed in this document, as well as other pertinent issues. All of the information received in response to this notice will be carefully reviewed. The comments received will assist federal OSHA in developing final regulation.

DATES: Written comments on the notice of proposed rulemaking must be postmarked no later than July 18, 1994.

ADDRESS: Comments and information should be submitted in quadruplicate to the Docket Officer, Docket No. C-03, Occupational Safety and Health Administration, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219-7894.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219-8151.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to require employers to inform OSHA and their employees about measures they will take or have taken in response to OSHA citations, as well as to inform employees about OSHA citations and the alleged safety or health hazards described therein.

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

ERRATA

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-30-001. Minimum Service Standards for Jails and Lockups.

Publication: 10:16 VA.R. 4187-4202 May 2, 1994.

Correction to Proposed Regulation:

Page 4190, definition of "Health inspection," line 2, change "ttate" to "state"

Page 4198, § 5.25, line 3, change "flammables" to "flammable"

Page 4198, § 5.26, line 1, after "orders" insert " *or position descriptions*"

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

† **July 18, 1994 - 10 a.m.** – Open Meeting
† **July 19, 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) contact 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. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT FOR THE AGING

July 2, 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 for the Aging intends to **repeal** regulations entitled: **VR 110-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 110-01-01:1. Public Participation Guidelines.** The proposed regulation establishes guidelines for the involvement of the public in the development and promulgation of department regulations.

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

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.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

Virginia State Apple Board

† **June 15, 1994 - 10 a.m.** – Open Meeting
Virginia State Apple Board, 1219 Stoneburner Street, Staunton, Virginia.

A quarterly meeting to discuss budget and marketing items for 1994-95 to promote the apple industry. Any person who needs any accommodation in order to participate at the meeting should contact Clayton Griffin at least two days before the meeting so suitable arrangements can be made. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Clayton Griffin, Program Director, Virginia State Apple Board, 1219 Stoneburner St., Staunton, VA 22401, telephone (804) 332-7790.

Virginia Egg Board

June 24, 1994 - 10 a.m. – Open Meeting
The Cavalier Hotel, Ocean Front at 42nd Street, Virginia Beach, Virginia. ♿

The board will meet to discuss business matters pertaining to the egg industry and the Virginia Egg Board. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki, Program Director, at least five days prior to the meeting so that suitable arrangements can be made. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Cecilia Glembocki, Program Director, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984.

Virginia Marine Products Board

June 14, 1994 - 5:30 p.m. – Open Meeting
Sewell's Ordinary Restaurant, Route 17, Gloucester, Virginia.

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. Any person who needs any accommodation in order to participate at the meeting should contact the agency before the meeting date, so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

Pesticide Control Board

June 28, 1994 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 4th Floor Conference Room, 1100 Bank Street, Richmond, Virginia.

The Policy and Procedures Committee will convene for the purpose of formulating a proposal to be presented to the full board at the July meeting on the regulation of commercial applicators not-for-hire. This is a continuation of the April 14-15, 1994, board meeting.

Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting so that suitable arrangements can be made for any appropriate accommodations.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P. O. Box 1163, 1100 Bank Street, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

† **July 21, 1994 - 10 a.m.** – Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia.

Pesticide Control Board committee meeting.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P. O. Box 1163, 1100 Bank Street, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

† **July 22, 1994 - 9 a.m.** – Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia.

A meeting to conduct general business and to adopt an amendment to VR 115-04-20, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services. 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 agenda at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting so that suitable arrangements can be made.

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.

Virginia Winegrowers Advisory Board

July 5, 1994 - 10 a.m. – Open Meeting
The State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A meeting to hear committee and project monitor reports and review old and new business. Public comment is welcome following the conclusion of board business.

Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo, identified in this notice, 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, 1100 Bank Street, Suite 1009, Richmond, VA 23219, telephone (804) 786-0481.

VIRGINIA BOARD FOR ASBESTOS LICENSING

June 13, 1994 - 9 a.m. – CANCELLED
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia.

A general 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

AUCTIONEERS BOARD

† **June 29, 1994 - 11 a.m.** – Open Meeting
Kirn Memorial Library, 301 East City Hall Avenue, Martin Room, 2nd Floor, Norfolk, Virginia.

A meeting to conduct a formal administrative hearing in regard to Virginia Auctioneers Board v. Calvin Zedd, t/a Colonel Calvin Zedd Auction Company and t/a Zedd Auctioneers, Ltd.

Contact: Carol A. Mitchell, Assistant Director, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

AVIATION BOARD

† **June 21, 1994 - 10 a.m.** – Open Meeting
Sheraton Airport Hotel, 4700 South Laburnum Avenue, Richmond, Virginia. ♿

A meeting to discuss matters of interest to the Virginia aviation community. Location accessible to handicapped. Individual with disability should contact Nancy Brent 10 days prior to the meeting if assistance is needed.

Contact: Nancy C. Brent, Aviation Board, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 236-3625.

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **June 21, 1994 - 8:30 a.m.** – Open Meeting
The Jackson Center, 501 North Second Street, Conference Room, 1st Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Review Board will hear administrative appeals concerning building and fire codes and other regulations of the department. The board will also issue interpretations and formalize recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, CPCA, Building Code Supervisor, Code Development Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

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. Public comment will not be received 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 ☎

Southern Area Review Committee

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. Public comment will not be received 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 ☎

GOVERNOR'S COMMISSION ON CITIZEN EMPOWERMENT

Education Committee

† **June 9, 1994 - 1 p.m.** – Open Meeting
Theater Row Office Building, 730 East Broad Street, Training Room 3, Richmond, Virginia.

An organizational and general meeting.

Contact: David Caprara, Executive Director, Governor's Commission on Citizen Empowerment, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1800.

Families and Individual Committee

† **June 13, 1994 - 10 a.m.** – Open Meeting
Theater Row Office Building, 730 E. Broad St., Training Room 1, Richmond, Virginia.

An organizational and general meeting.

Contact: David Caprara, Executive Director, Governor's Commission on Citizen Empowerment, 730 E. Broad St.,

8th Floor, Richmond, VA 23219, telephone (804) 692-1800.

Nonprofit Organizations Committee

† **June 13, 1994 - 10 a.m.** – Open Meeting
Theater Row Office Building, 730 East Broad Street, Training Room 3, Richmond, Virginia.

An organizational and general meeting.

Contact: David Caprara, Executive Director, Governor's Commission on Citizen Empowerment, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1800.

STATE BOARD FOR COMMUNITY COLLEGES

† **July 20, 1994 - 1 p.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

State board committee meetings will be held.

Contact: Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

† **July 21, 1994 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled meeting.

Contact: Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia State Parks Foundation

† **June 15, 1994 - 1:30 p.m.** – Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia. 🖻

A general business meeting.

Contact: Karen Spencer, Executive Secretary, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

June 29, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia.

A regular quarterly meeting of the board to (i) address policy and procedural issues; (ii) review and render decisions on applications for contractors' licenses; (iii) and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in executive session.

Contact: A.R. Wade, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8585.

Recovery Fund Committee

June 22, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 🖻

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Christine Martine at (804) 367-8561. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 West Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

July 2, 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 Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The amendments to the Minimum Standards for Jails and Lockups alter the requirements for administration and programs in jails and lockups and are based on a board committee review of the implementation and application of the standards. In summary, the changes are directed toward offering more flexibility in terms of population management; strengthening requirements where inmate supervision and general safety are a concern; and rearranging portions of the standards to enhance clarity, organization, and consistency among standards.

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

Code of Virginia.

Contact: Lou Ann White, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

* * * * * * * *

July 2, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-002. Community Diversion Program Standards.** The amendments to the Community Diversion Program Standards alter requirements for the development, operation and evaluation of programs and services provided under the Community Diversion Incentive Act. The amendments include format and organization changes in order to enhance clarity, the deletion of some text which is now incorporated in other documents, and a few substantive changes.

Statutory Authority: §§ 53.1-5 and 53.1-182 of the Code of Virginia.

Contact: Dee Malcan, Chief of Operations, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3242.

* * * * * * * *

July 2, 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 Corrections intends to repeal regulations entitled: **VR 230-30-006. Jail Work/Study Release Program Standards.** The Jail Work/Study Release Program Standards are being repealed because the provisions of these regulations will be included in the proposed amended regulations, VR 230-30-001, Minimum Standards for Jails and Lockups.

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

Contact: Lou Ann White, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

† **July 20, 1994 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia.

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

BOARD OF DENTISTRY

† **July 8, 1994 - 9 a.m.** – Open Meeting
† **July 15, 1994 - 9 a.m.** – Open Meeting
† **July 22, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

Informal conferences. 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., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY, TOWN OF BLACKSBURG

June 14, 1994 - 3 p.m. – Open Meeting
Montgomery County Courthouse, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia.

A meeting to discuss the development of hazardous materials emergency response plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P. O. Box 3726, Radford, VA 24143, telephone (703) 639-9313.

VIRGINIA EMPLOYMENT COMMISSION

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to amend regulations entitled: **VR 300-01-1. Definitions and General Provisions.** The proposed amendment encompasses changes to public participation guidelines in response to the 1993 amendment of the Virginia Administrative Process Act and adds definitions for terms used within VEC regulations.

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

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street,

Richmond, Virginia.

July 15, 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 Employment Commission intends to amend regulations entitled: **VR 300-01-2. Unemployment Taxes.** The proposed amendment clarifies existing provisions to enhance ease of use.

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

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to **repeal** regulations entitled: **VR 300-01-3. Benefits** and **adopt** regulations entitled: **VR 300-01-3:1. Required Records and Reports.** The purpose of the proposed amendment is to repeal current VR 300-01-3 and adopt new VR 300-01-3:1 in order to clarify and reorganize existing provisions within VEC regulations.

Statutory Authority: § 60-2.111 of the Code of Virginia.

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to **repeal** regulations entitled: **VR 300-01-4. Adjudication** and **adopt** regulations entitled: **VR 300-01-4:1. Combined Employer Accounts.** The purpose of the proposed amendment is to repeal current VR 300-01-4 and adopt VR 300-01-4:1 in order to clarify and reorganize existing provisions within VEC regulations.

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

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to adopt regulations entitled: **VR 300-01-5. Employer Elections to Cover Multi-state Workers.** The proposed regulation would promulgate existing provisions in a new form in order to facilitate greater ease of use.

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

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to adopt regulations entitled: **VR 300-01-6. Benefits.** The proposed regulation would promulgate existing provisions in a new form in order to facilitate greater ease of use.

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

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

* * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to adopt regulations entitled: **VR 300-01-7. Interstate and Multi-state Claimants.** The proposed regulation would promulgate existing provisions in a new form in order to facilitate greater ease of use.

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

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

* * * * * * * * *

June 22, 1994 - 10:30 a.m. – Public Hearing
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

July 15, 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 Employment Commission intends to adopt regulations entitled: **VR 300-01-8. Adjudication.** The proposed regulation would promulgate existing provisions in a new form in order to facilitate greater ease of use.

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **June 27, 1994 - 6 p.m.** – Public Hearing
Hanover County Courthouse Complex, Wickham Building, Board of Supervisors Meeting Room, Ashland, Virginia.
(Interpreter for the deaf provided upon request)

A meeting to provide opportunity for public comment on the air pollution issues concerning an application from Virginia Commonwealth University, Division of Animal Resources to construct and operate an incinerator for animal carcass and confiscated material waste located on their existing facility at 119-121 Cheroy Road, Ashland, Hanover County, Virginia.

Contact: Department of Environmental Quality, Richmond Air Office, 9210 Arboretum Parkway, Suite 250, Richmond, VA 23236, telephone (804) 323-2409.

Waste Tire End User Reimbursement Advisory Committee

† **June 16, 1994 - 10 a.m.** – Open Meeting
James Monroe Building, 101 N. 14th Street, Conference Room C, Richmond, Virginia.

The meeting is the fourth meeting of the advisory committee, which is assisting DEQ in developing regulations for reimbursing users of waste tire material, pursuant to §§ 10.1-1422.2 and 10.1-1422.3 of the Code of Virginia. A draft of the regulations will be reviewed and prepared for public hearings and comments.

Contact: R. Allan Lassiter, Jr., Manager, Waste Tire Program, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4215.

VIRGINIA FIRE SERVICES BOARD

June 23, 1994 - 7:30 p.m. – Public Hearing
Abingdon Fire Department, 316 Park Street, Abingdon, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, Fire Services Board, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

June 24, 1994 - 9 a.m. – Open Meeting
Abingdon Fire Department, 316 Park Street, Abingdon, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Fire Services Board, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

June 23, 1994 - 10 a.m. – Open Meeting
Abingdon Fire Department, 316 Park Street, Abingdon, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

June 23, 1994 - 9 a.m. – Open Meeting
Abingdon Fire Department, 316 Park Street, Abingdon, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, Fire Services Board, 2807 Parham Road, Suite 200, Richmond, VA 29294, telephone (804) 527-4236.

Legislative/Liaison Committee

June 23, 1994 - 1 p.m. – Open Meeting
Abingdon Fire Department, 316 Park Street, Abingdon, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, Fire Services Board, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 13, 1994 - 11 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

An examination committee meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

† **June 17, 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 Executive Committee of the Board of Game and Inland Fisheries will meet to discuss legislative funding and other administrative matters.

Contact: Belle Harding, Secretary to the Director, Department of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230-1104, telephone (804) 367-9231.

† **July 14, 1994 - 9 a.m.** – Open Meeting
† **July 15, 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 of Game and Inland Fisheries will meet to set the 1994-95 webless migratory game bird seasons (mourning dove, woodcock and rails), and intends to take final action on a proposed regulation that will provide for the use of crossbows for hunting deer during the special archery season by persons with permanent physical disabilities. The proposed regulation for the use of crossbows for hunting deer will be restricted to the individual's own property only. In addition, the board will consider rescinding VR 325-02-27, § 14, which allows disabled persons who possess appropriate permits from Virginia game wardens to shoot wild birds and wild animals from stationary vehicles.

The board intends to act on its proposed regulation and take final action to change the situs for boat registrations for personal taxation purposes and military status.

The board will consider a proposal to allow taxidermists, with the proper permits from the Department of Game and Inland Fisheries, to sell unclaimed taxidermy specimens, including whole mounts or parts thereof. The proposal allowing for the disposal of taxidermy specimens would limit the amount that could be charged to the balance remaining on the original invoice, including taxidermy services and reasonable storage fees. The sale of black bear specimens or parts thereof is specifically prohibited.

It will also review and may change its policy for license agent appointment and removal and discuss possible legislative proposals for the 1995 General Assembly session.

Other general and administrative matters, as necessary, may be discussed, and appropriate actions may be taken. The board will hold an executive session during this meeting.

PLEASE NOTE: THE BOARD HAS CHANGED ITS MEETING PROCEDURE. PUBLIC COMMENT IS NOW ACCEPTED ON THE FIRST MEETING DAY. IF THE BOARD COMPLETES ITS MEETING AGENDA ON JULY 14, IT WILL NOT CONVENE A MEETING ON JULY 15.

Contact: Belle Harding, Secretary to the Director, Department of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230-1104, telephone (804) 367-9231.

BOARD FOR GEOLOGY

June 16, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 395, Richmond, Virginia.

July 1, 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 for Geology intends to amend regulations entitled: **VR 335-01-02. Rules and Regulations for the Virginia Board for Geology.** The purpose of the proposed amendments is to revise fee structure, allow examination fee to be adjusted in response to contracts awarded in compliance with the Virginia Public Procurement Act, and establish the status of certifications between expiration and reinstatement.

Statutory Authority: § 54.1-1402 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

GOVERNOR'S COMMISSION ON GOVERNMENT REFORM

Regulatory Reform Committee

† **June 29, 1994 - 2 p.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

A public hearing on the regulatory process and issues surrounding the impact of regulations on the citizenry. Written and verbal comments will be accepted.

Contact: Bill Leighty, Assistant Director, Governor's Commission on Government Reform, P. O. Box 1475, Richmond, VA 23212, telephone (804) 786-3088.

DEPARTMENT OF HEALTH (STATE BOARD OF)

July 5, 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 Health intends to adopt regulations entitled: **VR 355-32-500. Regulations Governing the Emergency Medical Services Do Not Resuscitate Program.** These regulations will replace emergency regulations previously adopted and they set forth the requirements, provisions and implementation procedures, as well as the special form, for the Emergency Medical Services Do Not Resuscitate Program.

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

Contact: Susan McHenry, Director, Emergency Medical Services, 1538 E. Parham Road, Richmond, VA 23228, telephone (804) 371-3500 or toll free 1-800-523-6019.

HIV Prevention Community Planning Committee

† **June 14, 1994 - 9:30 a.m.** – Open Meeting
† **June 15, 1994 - 8:30 a.m.** – Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to consider research and current HIV prevention models. The goal of the committee is to develop a comprehensive prevention plan for Virginia.

Contact: Elaine G. Martin, Coordinator, STD/AIDS Education, Department of Health, Bureau of STD/AIDS, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-0877 or toll free 1-800-533-4148/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

June 28, 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

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)

June 15, 1994 - 10 a.m. – Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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

June 14, 1994 - 10 a.m. – Open Meeting

State Capitol, Senate Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places.

Loretto, Wytheville, Wythe County
Maiden Spring, Tazewell County
Mount Moriah Baptist Church and Cemetery, Roanoke (city)
Neabsco Ironworks Archaeological Site, Prince William County
La Riviere, Radford
Rose Hill, Loudoun County
Smithfield, Russell County
Springfield, Hanover County
Sunnyside, Loudoun County
Danville Historic District; consider renaming it the "Old West End Historic District"

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 5, 1994 - 9 a.m. – Open Meeting
August 2, 1994 - 9 a.m. – Open Meeting
September 6, 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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **June 17, 1994 - 10 a.m.** – Public Hearing
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

† **June 17, 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 Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-01-0001. Rules and Regulations – General Provisions for Programs of the Virginia Housing Development Authority.** The proposed amendments will (i) delete the definition of "family"; (ii) add a definition of "gross income" which shall be synonymous with "gross family income" as currently defined; (iii) define "household," in the context of the financing of a single family dwelling unit, to be two or more individuals living together on the premises as a single nonprofit housekeeping unit; (iv) change "family" to "household" where appropriate; and (v) make minor clarifications and typographical corrections.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

* * * * * * * *

† **June 17, 1994 - 10 a.m.** – Public Hearing
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

† **June 17, 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 Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.** The proposed amendments will (i) provide that single family loans can be made to more than one person if all such persons to whom the loan is to be made are to live together in the dwelling as a single nonprofit housekeeping unit; (ii) delete the requirement that such persons be related by blood, marriage or adoption; (iii) delete or modify references to "family" or terms containing "family," as appropriate, to reflect the foregoing changes; and (iv) make conforming changes, minor clarifications and typographical corrections.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, Virginia, telephone (804) 782-1986.

† **June 21, 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; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for General Provisions for

Programs of the Virginia Housing Development Authority and to the Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; and (v) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board 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.

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers

June 22, 1994 - 10 a.m. – Open Meeting
State Capitol, 910 Capitol Street, House Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Marilyn Mandel, Director, Office of Planning and Policy Analysis, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2385 or (804) 786-2376/TDD ☎

STATE COUNCIL ON LOCAL DEBT

June 15, 1994 - 11 a.m. – Open Meeting
July 20, 1994 - 11 a.m. – Open Meeting
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to 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.

COMMISSION ON LOCAL GOVERNMENT

† **July 11, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, 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 office.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Academic Affairs Committee

† **July 11, 1994 - 4 p.m.** – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ♿

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.

Community Advisory Committee

June 13, 1994 - 4 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.

Executive Committee

† **June 21, 1994 - 5 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.

Student Affairs Committee

† **July 25, 1994 - 4 p.m.** – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ♿

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.

Board of Visitors

† **July 29, 1994 - 9 a.m.** – Open Meeting
Longwood College, Ruffner Building, Virginia Room, 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.

STATE LOTTERY BOARD

June 27, 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. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

VIRGINIA MANUFACTURED HOUSING BOARD

† **June 15, 1994 - 10 a.m.** – Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, 2nd Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement and Manufactured Housing Office, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

MARINE RESOURCES COMMISSION

† **June 28, 1994 - 9:30 a.m.** – Open Meeting
Marine Resources Commission, 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 will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be 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, Marine Resources 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 ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

July 1, 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: Coverage Limits for Single Antigen Vaccines.** The Omnibus Budget Reconciliation Act of 1993, § 13631 prohibits the payment of federal financial participation for single-antigen vaccines except where medically justified. The purpose of this proposal is to promulgate permanent regulations to provide coverage policies for single-antigen vaccines.

Prior to the current emergency regulation, DMAS' policy for the coverage of childhood immunizations provided for the payment of claims for all single- and multi-antigen vaccines at the vaccines' acquisition cost without medical justification. The exception to this policy was the coverage of the measles, mumps, and rubella (MMR) vaccine which is provided to physicians through the DMAS/Merck MMR vaccine replacement program. Prior to the emergency regulation there were no requirements that in cases where a multi-antigen vaccine was available, that medical necessity be proven to receive Medicaid reimbursement for cases in which a single-antigen vaccine was administered. With the DMAS/Merck MMR vaccine replacement program, approval by DMAS is necessary only to reimburse physicians who do not participate in the replacement program for the cost of MMR vaccine purchased by the physician for use with Medicaid children. The Merck vaccine replacement program remains unchanged by this regulation.

The Omnibus Budget Reconciliation Act of 199. required that federal financial participation (FFP) be

denied for any amount expended for a single-antigen vaccine and its administration when the use of a multi-antigen vaccine was medically appropriate. This change was effective October 1, 1993. Additionally, this requirement focused on immunizations for measles, mumps, and rubella.

The proposed regulations concerning coverage limits for single-antigen vaccines have been modified from the initial emergency regulations to reflect recently promulgated federal guidelines from the U.S. Centers for Disease Control and Prevention, at the request of the Advisory Committee on Immunization Practices (ACIP), addressing the list and schedules of pediatric vaccines to be purchased and administered under the Vaccines for Children Program. The ACIP is also required, under § 1928(c)(2)(B)(i) and 1928(e) of the Social Security Act, to establish a list of vaccines for routine administration to children, along with schedules regarding the appropriate periodicity, dosage, and contraindications. Both the list of vaccines to be purchased and the administration schedule recommend that the single-antigen Haemophilus Influenzae b Conjugate vaccine (Hib) be one of the vaccines used to immunize children against Haemophilus Influenzae type b. The ACIP also notes that the combined DTP-Hib vaccine is also available for use where appropriate.

As a result, the proposed regulations will not require physicians to use the multi-antigen DTP-Hib vaccine when immunizing Medicaid children against diphtheria, tetanus, pertussis and haemoholus influenzae b. In other words, physicians may use the single-antigen Hib vaccine and receive reimbursement without providing medical justification. Physicians may, of course, continue to use the multi-antigen DTP-Hib vaccine.

Medical justification for the use of the single-antigen measles, mumps, or rubella vaccines with Medicaid children will continue to be required. The periodicity schedule promulgated by the ACIP recommends that two doses of the multi-antigen measles, mumps, and rubella vaccine be administered at 12-15 months of age and again before school entry. The ACIP further notes that the single-antigen measles, mumps, or rubella vaccines should be used only if (i) there is a specific contraindication to one component of the MMR vaccine, (ii) the child is known to be immune or adequately vaccinated for one or more of these diseases, or (iii) there is a need to immunize a child prior to one year of age (for example, during a measles outbreak).

The advantage to Medicaid eligible children, and the intent of Congress, is for more children to be more completely immunized. There will be no significant fiscal impact associated with these proposed regulations because the incidence of use of single virus vaccines is relatively low.

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

Written comments may be submitted through July 1, 1994, to Michael Jurgenson, Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

* * * * * * * *

† **August 12, 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 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; VR 460-02-4.1920. Methods and Standards Used to Establish Payment Rates – Other Types of Care; and VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services: Physical Therapy and Related Services.** The purpose of this proposal is to amend the State Plan for Medical Assistance and VR 460-04-3.1300 concerning the authorization and utilization review of physical therapy and related services, and to provide guidelines for the provision of psychological and psychiatric services in schools.

DMAS has provided reimbursement for physical therapy and related services since 1978 under two major programs: general physical rehabilitative and intensive rehabilitative services. This regulation will allow DMAS to categorize general physical outpatient rehabilitation (physical therapy, occupational therapy, and speech-language pathology services) into two subgroups.

Physician orders are required and must be in place before any services are initiated. Guidelines are provided when physical therapy and related conditions are to be considered for termination regardless of the already preauthorized number of visits or services. Guidelines are also provided for psychological and psychiatric services, and school divisions are added as an entity which can provide these services. In addition, revisions are made to the intensive rehabilitation regulations by moving detailed language for these services from the State Plan to state-only regulations. Finally, language is added to the reimbursement (fee-for-service) methodology section of the Plan to describe payment for physical therapy and related services that may be provided by schools and home health agencies. Language was added on the recommendation of the Health Care Financing

Administration because this area had not been adequately described in the Plan previously.

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

Written comments may be submitted through August 12, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

Drug Utilization Review Board

June 23, 1994 - 3 p.m. – Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

The scheduled session is a regular meeting of the board. Routine business will be conducted.

Contact: Carol B. Pugh, Pharm.D., DUR Program Consultant, Client Services Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

Informal Conference Committee

July 6, 1994 - 9 a.m. – Open Meeting
Sheraton Inn - Roanoke Airport, Ballroom B, 2727 Ferndale Road, Roanoke, 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

Advisory Committee on Optometry

July 22, 1994 - 10 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.
(Interpreter for the deaf provided upon request)

The advisory committee will hold a public hearing to receive public comments regarding amendments to VR 465-09-01, Certification for Optometrists, to include the pharmaceutical agent "Levocabastine."

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD

Advisory Board on Physical Therapy

June 23, 1994 - 9 a.m. – Open Meeting
Board of Medicine, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

A meeting to receive officers and staff reports on the Federation of Physical Therapy Boards' annual meeting; review credentialing agencies relating to foreign educated therapist; discuss proposals for impaired therapist and such other business that may come before the board.

The chairman will entertain public comments following the adoption of the agenda for 10 minutes on 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

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

June 22, 1994 - 10 a.m. – Open Meeting
Highlands Community Services Board, 3279 Lee Highway, Bristol, Virginia.

A regular monthly meeting. Agenda to be published one week prior to meeting date. 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.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P. O. Box 1797, Richmond, VA 23214, (804) 786-3921.

* * * * * * * *

June 22, 1994 - 10 a.m. – Public Hearing
Roanoke City Hall, 215 Church Avenue, S.W., Roanoke, Virginia.

June 24, 1994 - 10 a.m. – Public Hearing
Fairfax County Government Center, Fairfax County Board

Auditorium, 12000 Government Center Parkway, Fairfax, Virginia.

June 27, 1994 - 10 a.m. – Public Hearing
Henrico Area Mental Health and Retardation Services Board, 10299 Woodman Road, Conference Room C, Glen Allen, Virginia.

July 6, 1994 - 10 a.m. – Public Hearing
Eastern Virginia Medical School, Lewis Hall Auditorium, 700 Olney Road, Norfolk, Virginia.

August 16, 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to **repeal** regulations entitled: **VR 470-02-03. Rules and Regulations for the Licensure of Private Psychiatric Hospitals; VR 470-02-07. Rules and Regulations for the Licensure of Correctional Psychiatric Facilities; VR 470-02-08. Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities; VR 470-02-09. Rules and Regulations for the Licensure of Outpatient Facilities; VR 470-02-10. Rules and Regulations for the Licensure of Day Support Programs;** and **VR 470-02-11. Rules and Regulations for the Licensure of Residential Facilities** and **adopt** regulations entitled: **VR 470-02-13. Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of these regulatory actions is to redraft and consolidate six current licensure regulations for all licensable facilities except residential facilities for children.

Statutory Authority: § 37.1-10(6) and Chapter 8 (§ 37.1-179 et s eq.) of Title 37.1 of the Code of Virginia.

Written comments may be submitted until August 16, 1994, to Jacqueline M. Ennis, Assistant Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214.

Contact: Edith Smith, Manager, Licensure Operations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 371-6885.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **August 6, 1994 - 8:30 a.m.** – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia.

A regular meeting of the VMI Board of Visitors to include:

1. Election of President
2. Committee appointments
3. Committee reports

The Board of Visitors provides an opportunity for public comment at this meeting immediately after the Superintendent's comments (about 9 a.m.).

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206 or FAX (703) 464-7660.

STATE MILK COMMISSION

June 15, 1994 - 10:30 a.m. – Open Meeting
State Milk Commission, 200 North Ninth 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. Additionally, the commission will review a request to consider amending Regulation No. 10, paragraph 7(G)(2) of the Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate at this meeting should contact the agency at least five days prior to the meeting date so that suitable arrangements can be made for many appropriate accommodations.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. Ninth St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013/TDD ☎

BOARD OF NURSING

† **June 13, 1994 - 8:30 a.m.** – Open Meeting
† **June 14, 1994 - 8:30 a.m.** – Open Meeting
Virginia Employment Commission, 870 East Main Street, Wythe Shopping Plaza, Wytheville, Virginia. (Interpreter for the deaf provided upon request)

† **June 21, 1994 - 9 a.m.** – Open Meeting
† **June 22, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two

members of the Virginia Board of Nursing, will conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: M. Teresa Mullin, R.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 ☎

† **June 27, 1994 - 10 a.m.** – Open Meeting
Old Lane High School Building, 401 McIntire Road, Room 15, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 28, 1994 - 10 a.m.** – Open Meeting
Juvenile Probation and Parole Office, 420 South Main Street, Conference Room, Emporia, Virginia. ♿ (Interpreter for the deaf provided upon request)

A formal administrative hearing with licensee. Public comment will not be received.

Contact: M. Teresa Mullin, R.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 ☎

Education Conference Committee

June 22, 1994 - Noon – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Education Conference Committee will meet to consider matters related to nursing education programs approved by the Board of Nursing and make recommendations to the board as needed. The committee will conduct an informational proceeding during the meeting from 2 p.m. to 4 p.m. to hear comments related to the impact of health care reform on nursing education with regard to the shifting of student learning experiences to the community and faculty supervision of students in these settings.

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 or (804) 662-7197/TDD ☎

Nurse Aide Registry

June 13, 1994 - 8:30 a.m. – Open Meeting
June 14, 1994 - 8:30 a.m. – Open Meeting
Virginia Employment Commission, 870 East Main Street, Wytheville Shopping Plaza, Wytheville, Virginia. ♿ (Interpreter for the deaf provided upon request)

June 17, 1994 - 8 a.m. – Open Meeting
Radisson Hotel Lynchburg, Poplar Forest Room, 601 Main Street, Lynchburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two members of the Virginia Board of Nursing, will conduct informal conferences with nurse aides to determine what, if any, action should be recommended to the Board of Nursing. 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 PHARMACY

† **June 13, 1994 - 10 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A formal hearing as a result of a summary suspension.

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

NOTE: CHANGE IN MEETING TIME
June 16, 1994 - 3:30 p.m. – Open Meeting
Embassy Suites, 2925 Emerywood Parkway, Richmond, Virginia. ♿

A meeting of the Executive Committee of the Board of Professional Counselors to consider credentials and correspondence regarding credentials. Public comments will not be received.

Contact: Evelyn B. Brown, Executive Director or Joyce D. Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9912.

June 17, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 3, Richmond, Virginia. ♿

A regular meeting to consider committee reports, act on correspondence and any other matters under the jurisdiction of the board, and conduct regulatory review. This is a public meeting and there will be a 15-minute public comment period from 1 p.m. to 1:15 p.m.

Contact: Evelyn B. Brown, Executive Director or Joyce D. Williams, Administrative Assistant, Board of Professiona

Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **July 11, 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 Public Participation Guidelines, board member liaisons, hearing dates for locksmith study, and final discussion of property manager study results.

Contact: Joyce K. Brown, Secretary to the Board, Board 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

June 16, 1994 - 9 a.m. – Open Meeting
Shoney's Inn, Conference Room, 7007 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting. Time is provided for public comment at the beginning of the meeting.

Contact: Kenneth Shores, Department for Rights of Virginians with Disabilities, Monroe Building, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042/TDD

REAL ESTATE APPRAISER BOARD

June 21, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

July 18, 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 Real Estate Appraiser Board intends to amend regulations entitled: **VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.** The purpose of the proposed amendments is to achieve consistency with current federal standards and guidelines, allow for a renewal grace period, permit reinstatement, reflect current board policy, and improve current continuing education requirements.

Statutory Authority: §§ 54.1-2013, 54.1-2014, and 54.1-2016 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

Complaints Committee

† **July 6, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD

REAL ESTATE BOARD

Time-Share Advisory Committee

June 20, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Time-Share Advisory Committee will review the registration and disclosure requirements of the Virginia Real Estate Time-Share Regulations. Changes made necessary by statutory amendments effective July 1, 1994, will be discussed.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510 or (804) 367-9753/TDD

BOARD OF REHABILITATIVE SERVICES

June 23, 1994 - 10 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A meeting to conduct regular monthly business of the board.

Contact: Susan L. Urofsky, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23230, telephone (804) 662-7010, toll free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD

VIRGINIA RESOURCES AUTHORITY

June 14, 1994 - 9:30 a.m. – Open Meeting
Ramada Inn Ocean Tower Resort, 57th and Oceanview, Virginia Beach, Virginia.

The board will meet to approve minutes of the meeting of May 10, 1994; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

July 12, 1994 - 9:30 a.m. – Open Meeting
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of June 14, 1994; to review the authority's operations for the prior months and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

August 9, 1994 - 9:30 a.m. – Open Meeting
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of July 12, 1994; to review the authority's operations for the prior months and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

June 29, 1994 - 10 a.m. – Open Meeting
County of Henrico, Administrative Building, Board of Supervisors Board Room, 4301 East Parham Road, Richmond, Virginia. ♿

August 10, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, 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., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

June 15, 1994 - 1:30 p.m. – Open Meeting
June 16, 1994 - 9 a.m. – Open Meeting (if necessary)
July 20, 1994 - 1:30 p.m. – Open Meeting
July 21, 1994 - 9 a.m. – Open Meeting (if necessary)
Department of Social Services, 730 East Broad Street, Richmond, Virginia. ♿

A work session and formal business meeting.

Contact: Phyllis Sisk, Special Assistant to the Commissioner, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900, toll free 1-800-552-3431 or 1-800-552-7096/TDD ☎

* * * * * * * *

† **August 13, 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 repeal regulations entitled: **VR 615-01-01. Public Participation Guidelines.** The purpose of this action is to repeal existing public participation guidelines.

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

Contact: Margaret J. Friedenberg, Policy Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

* * * * * * * *

† **August 13, 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**

615-01-01:1. Public Participation Guidelines. This regulation describes the ways in which the state board and department will solicit and consider public comments.

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

Contact: Margaret J. Friedenberg, Policy Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

* * * * * * * *

June 17, 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 Social Services intends to amend regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The purpose of the regulation is to clarify or revise certain existing licensing requirements to ensure the reasonableness and enforceability of these standards while safeguarding protection to children in care.

Statutory Authority: §§ 63.1-196 and 63.1-202 of the Code of Virginia.

Written comments may be submitted through June 17, 1994, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF SOCIAL WORK

† **June 24, 1994 - 10:30 a.m.** – Open Meeting
Springfield Hilton Hotel, 6550 Loisdale Road, Springfield, Virginia. ♿

Informal conference. Public comment will not be received.

Contact: Evelyn B. Brown, Executive Director or Bernice Parker, Administrative Assistant, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328.

SPECIALIZED TRANSPORTATION COUNCIL

June 15, 1994 - 10 a.m. – Open Meeting
Northern Virginia Planning District Commission, 7535 Little River Turnpike, Suite 100, Annandale, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting. Public comments are welcome from 11 a.m. until noon.

Contact: Bob Knox, Assistant to the Commissioner, Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, VA 23219, telephone (804) 225-3140, toll free 1-800-552-3402 or (804) 225-2271/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

† **June 22, 1994 - 2 p.m.** – Open Meeting
Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the 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.

† **June 23, 1994 - 10 a.m.** – Open Meeting
Renaissance Hotel, 13869 Park Center Road, Herndon, 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 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.

TREASURY BOARD

June 15, 1994 - 9 a.m. – Open Meeting
July 20, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 N. 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

† **June 14, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal conferences.

† **June 15, 1994 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting to include regulatory review. Public comment will be accepted during regulatory review.

† **June 16, 1994 - 9 a.m.** – Open Meeting
Sheraton Park South, 9901 Midlothian Turnpike, Bon Air Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal conferences.

Contact: Teri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee On Services

† **July 16, 1994 - 11 a.m.** – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll free 1-800-622-2155.

Vocational Rehabilitation Advisory Council

† **September 17, 1994 - 10:30 a.m.** – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Request deadline for interpreter services is September 2, 1994, 3:30 p.m.

Contact: James G. Taylor, Vocational Rehabilitation Program Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

July 21, 1994 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WAR MEMORIAL FOUNDATION

June 27, 1994 - Noon – Open Meeting
Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Jon C. Hatfield, Acting Deputy Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

July 21, 1994 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4A, Richmond, Virginia. ♿

A general 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 ☎

* * * * * * * *

July 1, 1994 – Written comments may be submitted through 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7 of the Code of Virginia that the Board for Waste

Management Facility Operators intends to amend regulations entitled: **VR 674-01-02. Waste Management Facility Operators Licensing Regulations.** The proposed revisions increase the fees charged to applicants to comply with § 54.1-113 of the Code of Virginia; revise definitions; empower the board to extend interim certifications for up to six months should training and examination resources be inadequate to allow industry compliance by January 1, 1995; delete the first time full certification renewal continuing professional education (CPE) requirement as too rigorous just two years after meeting the entry training and examination requirements; revise the language describing the required examinations to recognize a change in the manner in which examinations will be constructed and administered; delete the 70% examination passing score in favor of a psychometrically established passing score; establish the status of a certified individual between the date his certification expires and the date it is reinstated to add a provision on which the current regulations are silent; and revise language to add to clarity, and correct errors in citations, grammar and word usage.

Statutory Authority: § 54.1-2211 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

LEGISLATIVE

JOINT COMMISSION ON HEALTH CARE

† **June 27, 1994 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia.

An open meeting.

Contact: Joint Commission on Health Care, 1001 E. Broad St., Suite 115, Richmond, VA 23219, telephone (804) 786-5445.

VIRGINIA HOUSING STUDY COMMISSION

† **June 16, 1994 - 10 a.m.** – Public Hearing
Christopher Newport University, 50 Shoe Lane, Anderson Auditorium, Administration Building, Newport News, Virginia.

† **June 20, 1994 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

† **July 7, 1994 - 10 a.m.** – Public Hearing
Clinch Valley College, Theater/Drama Building, Wise, Virginia.

† **July 11, 1994 - 10 a.m.** – Public Hearing
Administration Building, Loudoun County Board of Supervisors Board Room, 18 North King Street, Leesburg, Virginia.

Public hearings will be held on the following issues:

HJR 241 pursuant to the health and safety issues of residential rental property not covered under the Virginia Residential Landlord and Tenant Act.

HJR 251 pursuant to the need for legislation to authorize local governments to inspect rental property between occupancies to ensure compliance with applicable state codes and their enforcement authority when violations are found.

HJR 489 (1993) pursuant to blighted and deteriorated neighborhoods in the Commonwealth.

HJR 163 (1992) pursuant to homelessness in Virginia, specifically, appeal bond reform (HB 501) and terrorized tenants (HB 1381).

Other issues related to affordable housing in Virginia.

Persons wishing to speak should contact Nancy M. Ambler, Esquire, Executive Director, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 225-3797.

Contact: Nancy D. Blanchard, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, Ext. 565.

JOINT SUBCOMMITTEE TO EXAMINE FUNCTIONS OF STATE GOVERNMENT TO DETERMINE WHICH FUNCTIONS CAN BE PRIVATIZED

† **June 20, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia. ⊠ (Interpreter for the deaf provided upon request)

An open meeting to discuss SJR 17 (1994) and SJR 241 (1993).

Contact: Jeffrey F. Sharp, Staff Attorney, Division of Legislative Services, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

† **June 16, 1994 - 10 a.m.** – Open Meeting

General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia.

The commission will meet to review and discuss local programs' budgets.

Contact: Shuron Booker, Administrative Staff Assistant, Commission on the Virginia Alcohol Safety Action Program, 701 E. Franklin St., Suite 1110, Richmond, VA 23219, telephone (804) 786-5895.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 13

† Citizen Empowerment, Governor's Commission on
- Families and Individual Committee
- Nonprofit Organizations Committee

Funeral Directors and Embalmers, Board of
Longwood College
- Community Advisory Committee

† Nursing, Board of
- Nurse Aide Registry

† Pharmacy, Board of

June 14

Agriculture and Consumer Services, Department of
- Virginia Marine Products Board

† Health, Board of
- HIV Prevention Community Planning Committee

Higher Education for Virginia, State Council of
Emergency Planning Committee, Local - County of Montgomery/Town of Blacksburg
Historic Resources, Department of
- State Review Board

† Nursing, Board of
- Nurse Aide Registry

Resources Authority, Virginia
† Veterinary Medicine, Board of

June 15

† Agriculture and Consumer Services, Department of
- Virginia State Apple Board

† Conservation and Recreation, Department of
- Virginia State Parks Foundation

Historic Resources Board, Virginia
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers

Local Debt, State Council on
† Manufactured Housing Board, Virginia
Milk Commission, State
Social Services, State Board of
Specialized Transportation Council
Treasury Board
† Veterinary Medicine, Board of

June 16

Chesapeake Bay Local Assistance Board
- Central Area Review Committee

† Environmental Quality, Department of
- Waste Tire End User Reimbursement Advisory Committee

Individuals with Mental Illness Advisory Council, Protection and Advocacy for
† Professional Counselors, Board of
Social Services, State Board of
† Veterinary Medicine, Board of
† Virginia Alcohol Safety Program, Commission on the

June 17

† Game and Inland Fisheries, Department of
Nursing, Board of
- Nurse Aide Registry

Professional Counselors, Board of

June 20

† Joint Subcommittee to Examine Functions of State Government to Determine which Functions Can Be Privatized
Real Estate Board
- Time-Share Advisory Committee

June 21

† Aviation Board
† Building Code Technical Review Board, State
† Housing Development Authority, Virginia
† Longwood College
- Executive Committee

† Nursing, Board of

June 22

Contractors, Board for
- Recovery Fund Committee

Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Nursing, Board of
- Education Conference Committee

† Transportation Board, Commonwealth

June 23

† Dentistry, Board of
Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee

Medical Assistance Services, Department of
- Drug Utilization Review Board

Medicine, Board of
- Physical Therapy, Advisory Board on

Rehabilitative Services, Board of
† Transportation Board, Commonwealth

June 24

Agriculture and Consumer Services, Department of
- Virginia Egg Board

† Dentistry, Board of
Fire Services Board, Virginia
† Social Work, Board of

June 25
† Dentistry, Board of

June 27
† Health Care, Joint Commission on
Lottery Department, State
† Nursing, Board of
War Memorial Foundation, Virginia

June 28
Agriculture and Consumer Services, Department of
- Pesticide Control Board
Health Services Cost Review Council, Virginia
† Marine Resources Commission, Virginia
† Nursing, Board of

June 29
† Auctioneers Board
Contractors, State Board for
Sewage Handling and Disposal Appeals Review Board

July 5
Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Hopewell Industrial Safety Council

July 6
Medicine, Board of
- Informal Conference Committee
† Real Estate Appraiser Board
- Complaints Committee

July 11
† Local Government, Commission on
† Longwood College
- Academic Affairs Committee
† Professional and Occupational Regulation, Board of

July 12
Resources Authority, Virginia

July 14
† Game and Inland Fisheries, Department of

July 15
† Game and Inland Fisheries, Department of

July 16
† Visually Handicapped, Department for the
- Advisory Committee on Services

July 18
† Accountancy, Board for

July 19
† Accountancy, Board for

July 20
† Community Colleges, State Board for
† Corrections, Board of
Local Debt, State Council on
Social Services, State Board of
Treasury Board

July 21
† Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Community Colleges, State Board for
Social Services, State Board of
Voluntary Formulary Board, Virginia
Waste Management Facility Operators, Board for

July 22
† Agriculture and Consumer Services, Department of
- Pesticide Control Board

July 25
† Longwood College
- Student Affairs Committee

July 29
† Longwood College
- Board of Visitors

August 2
Hopewell Industrial Safety Council

August 6
† Virginia Military Institute
- Board of Visitors

August 9
Resources Authority, Virginia

August 10
Sewage Handling and Disposal Appeals Review Board

September 6
Hopewell Industrial Safety Council

September 17
† Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

PUBLIC HEARINGS

June 16
Geology, Board for
† Housing Study Commission, Virginia

June 17
† Housing Development Authority, Virginia

June 20
† Housing Study Commission, Virginia

June 21
Real Estate Appraiser Board

June 22
Employment Commission, Virginia
Mental Health, Mental Retardation and Substance Abuse Services, Department of

June 23
Fire Services Board, Virginia

June 24
Mental Health, Mental Retardation and Substance Abuse Services, Department of

June 27
† Environmental Quality, Department of
Mental Health, Mental Retardation and Substance Abuse Services, Department of

June 29
† Government Reform, Governor's Commission on
- Regulatory Reform Committee

July 6
Mental Health, Mental Retardation and Substance Abuse Services, Department of

July 7
† Housing Study Commission, Virginia

July 11
† Housing Study Commission, Virginia

July 22
Medicine, Board of
- Advisory Committee on Optometry