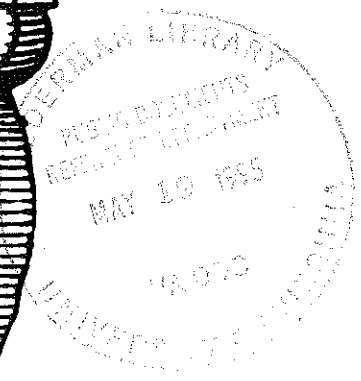
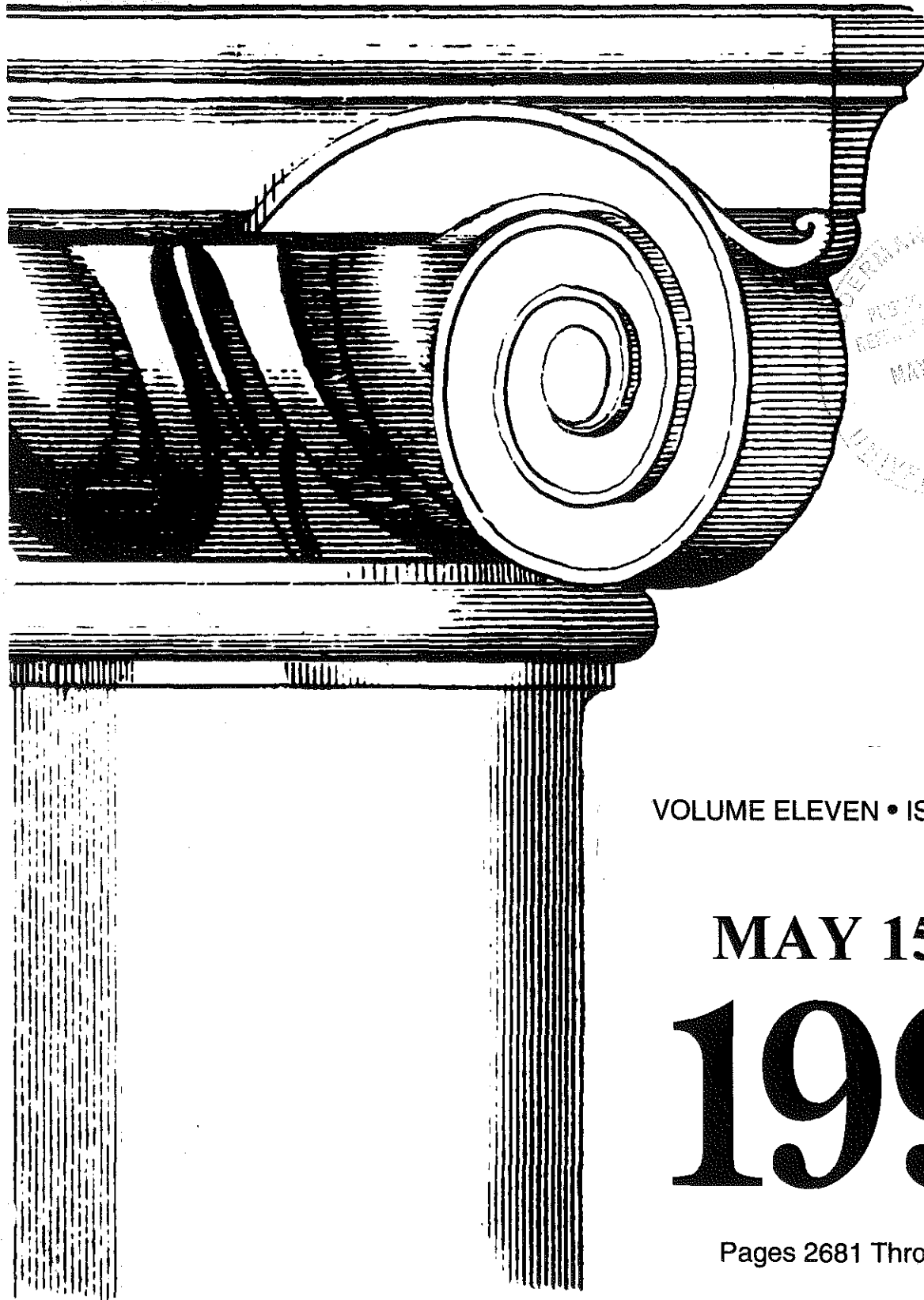


COD 5/R 26/11-17 02

THE VIRGINIA REGISTER

OF REGULATIONS

VA
DOC



VOLUME ELEVEN • ISSUE SEVENTEEN

MAY 15, 1995

1995

Pages 2681 Through 2834

Pollutant Discharge Elimination System (VPDES) No. VA0004821. This hearing is being held pursuant to §§ 9-6.14:12 and 62.1-44.25 of the Code of Virginia, as well as the board's Procedural Rule No. 1 and VR 680-14-01 (Permit Regulation).

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

† **June 28, 1995 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road., Board Room, Glen Allen, Virginia. ☎

A regular quarterly meeting.

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

VIRGINIA WORKERS' COMPENSATION COMMISSION

† **June 2, 1995 - 10 a.m.** -- Public Hearing
Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia. ☎

A public hearing to discuss the definition of "community" as it is construed in § 65.2-605 of the Code of Virginia and proposed Rule 14 of the Virginia Workers' Compensation Commission. Speakers will be limited to 10 minutes each and should preregister. Copies of proposals under consideration may be obtained from Kim Lewis after May 1, 1995.

Contact: Kim S. Lewis, Administrative Staff Assistant, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-8661 or FAX (804) 367-9740.

BOARD OF YOUTH AND FAMILY SERVICES

† **May 10, 1995 - 8:30 a.m.** -- Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ☎

Committee meetings will be held from 8:30 to 10 a.m., and a general meeting from 10 a.m. to 5 p.m. to review programs recommended from certification or probation, to consider adoption of draft policies, and other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

VIRGINIA CODE COMMISSION

Title 15.1 Recodification Task

May 18, 1995 - 10 a.m. -- Open Meeting

May 19, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia.

A meeting to continue drafting revision of Title 15.1 to present to the Virginia Code Commission. SJR 2.

Contact: Michelle Browning, Senior Operations Staff Assistant, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JUVENILE JUSTICE SYSTEM TASK FORCE

† **June 27, 1995 - 10 a.m.** -- Open Meeting
Tidewater area; location to be announced.

A regular meeting. HJR 604.

Contact: Joyce Huey, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

June 2, 1995 - 2 p.m. -- Open Meeting
Stratford Hall, Westmoreland County, Virginia.

A final meeting to review the 1995 session and the final report of the commission.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Building, 910 Capitol St., Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 1

Alcoholic Beverage Control Board
Conservation and Recreation, Department of
- Rivanna Scenic River Advisory Board
Funeral Directors and Embalmers, Board of
- Legislative Committee
Library Board

Calendar of Events

May 2

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
Conservation and Recreation, Board of
Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council

May 3

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Architects
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Contractors, Board for
† Game and Inland Fisheries, Board of
Outdoors Foundation, Virginia
Vocational Education, Virginia Council on

May 4

Audiology and Speech-Language Pathology, Board of
Branch Pilots, Board for
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
Contractors, Board for
Dentistry, Board of
† Forestry, Board of
Game and Inland Fisheries, Board of
Medicine, Board of
Vocational Education, Virginia Council on

May 5

Dentistry, Board of
Game and Inland Fisheries, Board of
† Health Profession, Department of
- Task Force on Unified Regulation of Psychologists

May 6

Dentistry, Board of

May 8

Agriculture and Consumer Services, Department of
- Virginia Seed Potato Board
† ASAP Policy Board - Valley
Hearing Aid Specialists, Board for
† Higher Education for Virginia, State Council of

May 9

† Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Higher Education for Virginia, State Council on
† Library of Virginia
- State Networking Users Advisory Board

May 10

† Deaf and Hard-of-Hearing, Department for the
- Advisory Board
Environmental Quality, Department of
- Cost-Benefit Analysis Work Group
Higher Education in Virginia, Commission on the Future of
† Medicine, Board of
† Statewide Human Services Information and Referral
Advisory Council
† Veterans' Affairs, Virginia Board on
† Youth and Family Services, Board of

May 11

† Environmental Quality, Department of
† Health, Department of
- Biosolids Use Regulations Advisory Committee
† Juvenile Justice System Task Force
Medicine, Board of
† Recycling Markets Development Council
† Social Work, Board of
† Transportation Safety Board, Virginia

May 12

† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
Library of Virginia
- VLIN Task Force/Automation and Networking
Committee
† Recycling Markets Development Council
- Plastics Subcommittee
† Social Work, Board of

May 15

† Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Alcoholic Beverage Control Board

May 16

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Certified Seed Board, State
† Corrections, Board of
- Correctional Services Committee
† Housing Development Authority, Virginia
Psychology, Board of
† Water Control Board, State

May 17

† Community Colleges, State Board for
† Corrections, Board of
- Administration Committee
George Mason University
- Board of Visitors
Local Debt, State Council on
† Medicine, Board of
† Optometry, Board of
† Transportation Board, Commonwealth
Treasury Board
† Virginia Racing Commission

May 18

Asbestos Licensing and Lead Certification, Board for
† Community Colleges, State Board for
† Health, Department of
- Commissioner's Waterworks Advisory Committee
† Medicine, Board of
Military Institute, Virginia
- Board of Visitors
† Optometry, Board of
† Professional Counselors, Board of
† Soil and Water Conservation Board, Virginia
† Transportation Board, Commonwealth
Title 15.1 Recodification Task Force

May 19

Family and Children's Trust Fund
† Medicine, Board of

Calendar of Events

Professional Counselors, Board of
Title 15.1 Recodification Task Force

May 20

Visually Handicapped, Department for the
Vocational Rehabilitation Advisory Council

May 22

† Nursing, Board of

May 23

† Health Services Cost Review Council, Virginia
† Nursing, Board of
Real Estate Appraiser Board
† Small Business Financing Authority, Virginia

May 24

† Nursing, Board of
Sewage Handling and Disposal Appeals Review Board

May 25

Compensation Board
† Education, Board of
† Nursing, Board of
† Richmond Hospital Authority
- Board of Commissioners

May 26

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Architects

May 31

Alcoholic Beverage Control Board

June 1

Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
Library of Virginia
- VLIN Task Force/Automation and Networking
Committee

June 2

Population Growth and Development, Commission on

June 5

Barbers, Board for
Library Board

June 6

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Hopewell Industrial Safety Council
Library Board

June 7

Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

June 12

Alcoholic Beverage Control Board
Cosmetology, Board for

June 13

Higher Education for Virginia, State Council on

June 14

Environmental Quality, Department of
Higher Education in Virginia, Commission on the Future
of

June 21

Local Debt, State Council on
Treasury Board

June 22

† Education, Board of

June 26

Alcoholic Beverage Control Board

June 28

Contractors, Board for
† Water Control Board, State

July 11

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Higher Education for Virginia, State Council on
† Hopewell Industrial Safety Council

July 19

Environmental Quality, Department of

PUBLIC HEARINGS

May 1

Nursing and Medicine, Committee of the Joint Boards of
Visually Handicapped, Department for the

May 3

Criminal Justice Services, Department of

May 4

Visually Handicapped, Department for the

May 10

Visually Handicapped, Department for the

May 12

Pharmacy, Board of

May 18

Asbestos Licensing and Lead Certification, Board for

June 2

† Workers' Compensation Commission, Virginia

June 6

Mines, Minerals and Energy, Department of

June 7

† Medicine, Board of

THE VIRGINIA REGISTER INFORMATION PAGE

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, is required by law to be published in *The Virginia Register of Regulations*.

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the 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 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-month duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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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.

Members of the Virginia Code Commission: Joseph V. Gartlan, Jr., Chairman, W. Tayloe Murphy, Jr., Vice Chairman; Russell M. Carneal; Bernard S. Cohen; Frank S. Ferguson; L. Cleaves Manning; E. M. Miller, Jr.; Theodore V. Morrison, Jr.; William F. Parkerson, Jr.; Jackson E. Reasor, Jr.

Staff of the Virginia Register: Joan W. Smith, Registrar of Regulations; Jane D. Chaffin, Assistant Registrar of Regulations.

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

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

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 address the following issues:

1. Relaxing criteria for approved CE to allow courses approved by some other approval method, but which relate to pharmacy, pharmacology, or other drug or pharmacy related topic (e.g. Category I CME's which relate to drug therapy),
2. Amending fax regulation to include schedule II-V consistent with new federal regulations—have received petition for rulemaking (current regulation is particularly burdensome to pharmacies serving nursing homes and home infusion pharmacies),
3. Reducing the 30-day notice to the board for pharmacies which wish to close to a 15-day notice to be consistent with the 1994 statute change reducing the time for notice to the public,
4. Better regulation of the use of automated dispensing machines which are being used in current practice, but probably not in compliance with current regulations and law,
5. Considering amendments to address on-line transmission of prescriptions by practitioners to pharmacy and from one pharmacy to another pharmacy for copies,
6. Better regulation of satellite pharmacies in hospitals by possibly requiring a separate pharmacist in charge,
7. Changing definitions of storage temperatures consistent with new USP definitions,
8. Adding a specific requirement for the biennial inventory to be signed, dated, and designation made as to opening or closing of business,
9. Considering regulations setting standards for compounding sterile products,
10. Minor "housekeeping" amendments to correct errors from previous revisions, remove or amend provisions which are obsolete or inconsistent with some other prevailing law, regulation, contract, or procedure, as follows:
 - a. Replace the term "nursing homes," still in some paragraphs, with "LTCF" and review whether the "LTCF" should have replaced "nursing homes" in § 11.2(9)

- b. The number of destruction forms required for DEA is not consistent with federal requirements
- c. DEA no longer accepts drugs for destruction
- d. Change "employee" in § 12.1 D to "person" to cover college infirmaries and other situations other than industrial first aid rooms
- e. Remove the "examination" portion of the current combination fee for "application and examination" since candidates for examination will directly pay the examination contractor the amount specified in contract
- f. Make other nonsubstantive corrections or changes noted during process.

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

Statutory Authority: §§ 54.1-2400, 54.1-3307, 54.1-3314.1, 54.1-3410 and 54.1-3434.

Public comments may be submitted until May 26, 1995.

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

VA.R. Doc. No. R95-322; Filed March 1, 1995, 10:57 a.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

May 17, 1995 - 10 a.m. -- Public Hearing
Richmond District Office, 2400 Pine Forest Drive, Colonial Heights, Virginia.

May 18, 1995 - 11 a.m. -- Public Hearing
Northern Virginia Community College, Woodbridge Campus, Woodbridge, Virginia.

May 22, 1995 - 1 p.m. -- Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

July 15, 1995 -- Public 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 Commonwealth Transportation Board intends to repeal regulations entitled: VR 385-01-12. Hauling Permit Manual, and adopt regulations entitled: VR 385-01-12:1. Hauling Permit Manual. The revised Hauling Permit Manual of the Commonwealth Transportation Board identifies conditions under which overweight and oversize hauling permits may be granted, and sets forth the fee structure for the permits. The revised manual eliminates obsolete requirements and policies required to obtain overweight or oversize hauling permits, expands weight allowances under general blanket conditions, and makes obtaining overweight and oversize permits less restrictive.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Contact: William R. Childress, Hauling Permit Manager, Department of Transportation, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676 or toll-free 1-800-828-1120/TDD ☎

PROPOSED REGULATIONS

For Information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: VR 385-01-12. Hauling Permit Manual
(REPEALING).

VA.R. Doc. No. R95-451; Filed April 24, 1995, 3:22 p.m.

Title of Regulation: VR 385-01-12:1. Hauling Permit
Manual.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18
(§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code
of Virginia.

Public Hearing Dates: May 17, 1995 - 10 a.m. (Richmond)
May 18, 1995 - 11 a.m. (Northern
Virginia)
May 22, 1995 - 1 p.m. (Roanoke)

Written comments may be submitted until July 15, 1995.
(See Calendar of Events section
for additional information)

Basis: The basis of the Hauling Permit Manual of the
Commonwealth Transportation Board is Article 18 (§ 46.2-
1139 et seq.) of Chapter 10 of Title 46.2, and §§ 33.1-12(3)
and 33.1-49 of the Code of Virginia. These statutes give the
board broad authority to regulate traffic on state highways, as
well as the use of the highway systems.

Purpose: The purpose of the revision to the Hauling Permit
Manual of the Commonwealth Transportation Board is to
make obtaining overweight and oversize permits less
restrictive to the user and to eliminate obsolete policies and
requirements. The policies and procedures contained within
the revised Hauling Permit Manual of the Commonwealth
Transportation Board protect the traveling public from hazard
and unnecessary inconvenience, and preserve the capacity
and structural integrity of Virginia's highways and bridges.

Substance: The substance of the revision to the Hauling
Permit Manual of the Commonwealth Transportation Board
will result in a less restrictive and less burdensome blanket
permit acquisition process for the customer, and will allow
more customers to qualify for blanket permit usage. The
revision to the Hauling Permit Manual also eliminates the
bond requirement currently required for superload single trip
permit requests. Instead of posting a bond, customers will be
required to produce a certificate of insurance.

Issues: The issues of the revised manual to the Hauling
Permit Manual of the Commonwealth Transportation Board
are that the permits will be less restrictive to the public, and
more responsive to their needs. There are no disadvantages
to the agency or the Commonwealth.

Estimated Impact: The estimated impact of the revised
Hauling Permit Manual of the Commonwealth Transportation
Board will primarily affect any person or business wishing to
obtain an overweight or oversize permit to transverse

Virginia's highways. The financial impact to users of
overweight or oversize permits varies depending on the type
of permit needed. Costs range from no fee permits to \$85 for
a two-year blanket permit. Additive unit charges include a
\$4.00 per structure research fee for all superload single trip
permit requests. An additional additive unit charge of \$.10
per mile is assessed to all permit requests pertaining to
tractor trucks, trucks, and heavy-duty trailers used for the
transportation of heavy construction equipment, cranes, well-
digging apparatus, and other heavy equipment. Fines or
penalties may also result from violations of these regulations.

The costs to implement the regulation and to enforce its
provisions include the cost of the Hauling Permit Section
located at the Department of Transportation's Central Office,
a proportion of the costs to maintain and staff the weigh
stations, and the cost to reproduce the Hauling Permit
Manual. These costs are estimated to be \$365,678, based
on fiscal year 1993 data. A large proportion of this sum is
attributable to annual costs for the Hauling Permit Section;
the actual cost to print the revised manual is negligible.
Funds used to implement and enforce this regulation come
from the Highway Maintenance and Operating Fund.
Approximately \$1.01 million annually is collected from permit
fees and put into this fund.

The revised Hauling Permit Manual of the Commonwealth
Transportation Board will equally affect all localities adjacent
to the roads used by the trucking industry.

Summary:

*The revised Hauling Permit Manual of the
Commonwealth Transportation Board identifies
conditions under which overweight and oversize hauling
permits may be granted, and sets forth the fee structure
for the permits.*

*The revised manual eliminates obsolete requirements
and policies required to obtain overweight or oversize
hauling permits, expands weight allowances under
general blanket conditions, and makes obtaining
overweight and oversize permits less restrictive.*

VR 385-01-12:1. Hauling Permit Manual.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

*"Automobile and watercraft transporters" means a tractor
truck, lowboy, vehicle, or combination, including vehicles or
combinations which transport motor vehicles or watercraft on
their power unit, designed and used exclusively for the
transportation of motor vehicles or watercraft.*

*"B-train assembly" means a rigid frame extension attached
to the rear frame or a first semitrailer which allows for a fifth
wheel connection point for the second semitrailer.*

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"Nondivisible load or vehicle" means a load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight hours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

"Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rest on or is carried by another vehicle.

"Stinger-steered automobile and watercraft transporters" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind the rearmost axle of the power unit.

"Tractor truck" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed as to carry a load other than a part of the load and weight of the vehicle attached to that vehicle.

"Trailer" means a vehicle without motive power designed for carrying property of passengers wholly on its own structure and for being drawn by a motor vehicle, including mobile homes.

"Truck" means a motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck - tractor semitrailer - semitrailer" means in a truck-tractor semitrailer combination vehicle, the two trailing units are connected with a B-train assembly.

"Vehicle configuration" means the height, weight, width and length of a vehicle to include vehicle axle spacing.

§ 1.2. General.

A. The Code of Virginia sets forth limitations of weight, width, height and length of objects and vehicles which may be moved upon state highways and also empowers the Commonwealth Transportation Board to issue oversize or overweight permits for vehicles traveling over Virginia's highways with loads that, when reduced to their smallest dimensions, exceed maximum legal limits.

B. The intent of establishing statutory limitations is to protect the public from hazard and unnecessary inconvenience, and to preserve the capacity and structural integrity of highways and bridges. Also, it is assumed that the state legislature did not intend for the Department of Transportation to allow, by permit, the movement of any and all vehicles or loads over the highways where such

movements would exceed statutory limitations (especially where other forms of transportation are available or when loads can be reasonably reduced to legal limits).

C. The policy of the Department of Transportation is to give primary consideration to safety, comfort, convenience and economic interest of the general public and the protection of the state highway systems.

§ 1.3. Authority; permits.

A. The Commissioner of the Department of Transportation or his designee shall issue oversize or overweight permits for qualifying vehicles. Regardless of the route shown on the permit, a permitted vehicle shall travel an alternative route:

1. If directed by a law-enforcement officer.
2. If directed by an official traffic control device.

If the specified route on the permit is officially detoured, the driver of the permitted vehicle shall contact the issuing permit office for a revision of the permit.

B. Application for permits shall be made to the Department of Transportation or its designee by telephone, wire service or written request. Application for permits requiring a bridge engineering study or other special conditions or considerations shall be submitted at least 10 working days prior to the date of the anticipated move.

C. Permits may be denied, revoked or declared invalid as stated in § 13 of this manual.

D. Permits may be obtained in four different ways:

1. Calling the Overweight/Oversize Permit Office at (804) 786-2787; or
2. Appearing in person at any Virginia Department of Transportation or DMV office; or
3. Using a permit transmission service (see Permit Service Contacts, § 13.1); or
4. Mailing an application to: Virginia Department of Transportation, Overweight/Oversize Permit Section, 1221 E. Broad St., Richmond, VA 23219.

PART II.

STATUTORY WEIGHT LIMITS FOR VIRGINIA.

§ 2.1. Interstate system.

If the dimensions of the vehicle combination or nondivisible load, or both, exceed one of the following statutory limitations listed below, an overweight or oversize permit is required.

Also see Axle Spacing chart (§ 2.3) for applicable weight allowances.

Single Axle Weight: 20,000 pounds

Tandem Axle Weight: 34,000 pounds (more than 40 inches but less than 96 inches between axle centers)

Gross Weight: 80,000 pounds

Width: 8 feet 6 inches (excluding mirrors and safety devices)

Height: 13 feet 6 inches

Length: Trailer — 48 feet
Semitrailer — 53 feet including load
Twin trailers — 28 1/2 feet

Tractor truck semitrailer combinations — No overall length restrictions

Automobile and watercraft transporters — 65 feet plus 3-foot overhang to front and 4-foot overhang to rear

Stinger-steered automobile and watercraft transporters — 75 feet plus 3-foot overhang to front and 4-foot overhang to rear

Tractor trucks shall not have more than one semitrailer attached.

Trucks shall not have more than one trailer attached.

Three motor vehicles shall be drawn only if coupled together by a saddle mount device.

§ 2.2. Primary and secondary systems.

If the dimensions of the vehicle combination or nondivisible load, or both, exceed one of the following statutory limitations listed below, an overweight or oversize permit is required.

Also see Axle Spacing chart (§ 2.3) for applicable weight allowances.

Single Axle Weight: 20,000 pounds

Tandem Axle Weight: 34,000 pounds (more than 40 inches but less than 96 inches between axle centers)

Gross Weight: 80,000 pounds

Width: 8 feet excluding mirrors. Safety devices not to exceed 3 inches on each side

Height: 13 feet 6 inches

Length: Truck — 40 feet excluding load
Semitrailer — 48 feet
Twin trailers — 28 1/2 feet

Tractor semitrailer combination — 65 feet including load

Combination of a towing vehicle and any manufactured housing — 60 feet including load

§ 2.3. Axle spacing chart.

Maximum Weight in Pounds for Any Group of Two or More Consecutive Axles.

"L" is defined as the distance in feet between extremes of any group of two or more consecutive axles.

"L"	2 axles	3 axles	4 axles	5 axles	6 axles	7 or more
4	44,000					
5	44,000					
6	44,000					
7	44,000					
8	48,000	53,500				
9		54,500				
10		55,000				
11		56,000				
12		56,500	63,000			
13		57,500	63,500			
14		58,000	64,500			
15		59,000	65,000			
16		59,500	65,500	72,500		
17		60,500	66,500	73,000		
18		61,000	67,000	74,000		
19		62,000	67,500	74,500		
20		62,500	68,500	75,000	82,000	
21		63,500	69,000	75,500	82,500	
22		64,000	69,500	76,500	83,000	
23		65,000	70,500	77,000	84,000	
24		65,500	71,000	77,500	84,500	91,500
25		66,500	71,500	78,000	85,000	92,000
26		67,000	72,500	79,000	85,500	92,500
27		68,000	73,000	79,500	86,000	93,000
28		68,500	73,500	80,000	87,000	94,000
29		69,500	74,500	80,500	87,500	94,500
30		70,000	75,000	81,500	88,000	95,000
31		71,000	75,500	82,000	88,500	95,500
32		71,500	76,500	82,500	89,000	96,000
33			77,000	83,000	90,000	97,000
34			77,500	84,000	90,500	97,500
35			78,500	84,500	91,000	98,000
36			79,000	85,000	91,500	98,500
37			79,500	85,500	92,000	99,000
38			80,500	86,500	93,000	99,500
39			81,000	87,000	93,500	100,500
40			81,500	87,500	94,000	101,000
41			82,500	88,000	94,500	101,500
42			83,000	89,000	95,000	102,000
43			83,500	89,500	96,000	102,500
44			84,500	90,000	96,500	103,000
45			85,000	90,500	97,000	104,000
46			85,500	91,500	97,500	104,500
47			86,500	92,000	98,000	105,000
48			87,000	92,500	99,000	105,500
49			87,500	93,000	99,500	106,000
50			88,500	94,000	100,000	106,500
51			89,000	94,500	100,500	107,500
52			89,500	95,000	101,000	108,000
53			90,500	95,500	102,000	108,500
54			91,000	96,500	102,500	109,500
55			91,500	97,000	103,000	109,500
56			92,500	97,500	104,000	110,000
57			93,000	98,000	104,500	111,000
58			94,000	99,000	105,000	111,500
59			94,500	99,500	105,500	112,000
60			95,000	100,000	106,000	112,500
61			96,000	101,000	106,500	113,000
62				101,500	107,000	113,500
63				102,000	108,000	114,500
64				102,500	108,500	115,000

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PART III.

DESCRIPTIONS, REQUIREMENTS AND LIMITATIONS OF SPECIAL PERMITS AVAILABLE.

§ 3.1. Blanket permit.

A blanket permit allows frequent movements within a specified time frame on designated or all unrestricted routes, or both, unless posted otherwise, in Virginia. Blanket permits will be issued on a case-by-case basis and only after an appropriate engineering study has been completed to ensure the vehicle configuration will not damage bridges and structures throughout the state or along the designated route. Results of the engineering study may render configuration ineligible for a blanket permit. Request for blanket permits should be made at least 10 workdays prior to the anticipated date of movement.

Blanket permits may only be obtained through the Virginia Department of Transportation Central Office or Department of Motor Vehicles and the cost is \$45 for a one-year permit and \$85 for a two-year permit. The Department of Motor Vehicles will assess a monthly fee for each mile the vehicle operates under the blanket permit. The fee is \$.10 per mile and is charged for vehicles or equipment, or both, that cannot be licensed in Virginia due to the vehicle or equipment size exceeding statutory limitations. The applicant will pay this fee directly to the Department of Motor Vehicles at 2300 West Broad Street, Richmond, Virginia 23219.

If the vehicle configuration exceeds any of the parameters listed below, the applicant shall apply for a single trip or superload permit.

Width 14 feet (Manufactured housing - 14 feet plus 12-inch side overhang)

Weight 115,000 pounds gross (7 axles with 64 feet of axle spacing)

Maximum Axle Weights:

Single 24,000

Tandem 44,000

Tri-Axle and Quad-Axle groups - refer to Axle Spacing Chart (§ 2.3).

§ 3.2. Single trip permit.

A single trip permit is issued to cover one movement between two specific points within a 10-day period. The 10-day travel window is allowed to give the transporter flexibility in case of inclement weather or unforeseen circumstances beyond the mover's control. Single trip permits may be obtained through the Department of Motor Vehicles, a permit transmission company (see Permit Transmission Company Listing, § 13.1), the Virginia Department of Transportation central office, Virginia Department of Transportation district office or Virginia Department of Transportation residency office (see Virginia Department of Transportation Contact Listing, § 13.2).

Single trip permits are \$12 each. Vehicles or equipment that cannot be licensed in Virginia because they exceed statutory size or weight limitations, or both, will pay the single

permit price plus a fee of \$.10 per mile. The fee of \$.10 per mile is collected prior to the issuance of the single trip permit.

If vehicle configuration or load weight exceed any of the parameters listed below, the applicant shall apply for a superload permit.

Height: 15 feet

Width: 14 feet

Length: 150 feet Note: Fairfax County: 100 feet on noninterstate routes. Virginia Beach, Norfolk, Portsmouth and Chesapeake: 100 feet to a bridge site.

Gross Weight: 130,000 pounds — secondary and primary
150,000 pounds — interstate

§ 3.3. Superload permit.

A. A superload permit is required for all movements that exceed the maximum parameters established for single trip hauling permits. Movements with a width in excess of 14 feet will be required to travel on a specific date. Superload permits will be issued on a case-by-case basis after an appropriate engineering study has been completed to ensure the applicant's vehicle configuration will not damage bridges and structures on the designated route of travel. Results of the engineering study may render the applicant's vehicle configuration ineligible for movement along Virginia's highways.

Superload permits can only be obtained through the Virginia Department of Transportation central office. Requests for superload permits should be made at least 10 workdays prior to the anticipated date of movement.

Superload permits cost \$12 each, plus a \$4.00 research fee per structure crossed. In order to safely route vehicle configurations with superload dimensions, a bridge engineering study is required. Each structure along the proposed route will be analyzed to ensure the dimensions of the superload vehicle will not cause damage to the structure. Vehicles or equipment that cannot be licensed in Virginia because they exceed statutory size or weight limitations, or both, will also incur an additional charge of \$.10 per mile. The fee of \$.10 per mile is collected prior to the issuance of the superload permit.

B. Requirements for superload permits are described in this subsection:

1. The Preliminary Review Request form is required on all superloads exceeding single trip weight limitations. This form shall list all pertinent information needed to start the required engineering study. The form requires information such as company name and address; dimensions of vehicle and load; origin and destination; diagram of vehicle to include axle spacing and axle weight; and route of preference. It takes approximately 10 business days to receive the results of the request. A Preliminary Review Request form can be obtained by calling (804) 786-2787.

2. Superload permit requests with dimensions in excess of 15 feet high or 14 feet wide or 151,000 pounds, or any combination, shall be accompanied by a valid certificate or letter of insurance from the issuing insurance agent or agency. Insurance shall be valid through completion of move. Coverage shall be \$500,000 or more. Insurance shall cover damage to Virginia's highways, bridges and structures resulting from use by the applicant.

3. A letter of variance is requested on all movements that exceed 14 feet in width or 150 feet in length, or both. The shipper or the manufacturer of the oversized item should submit the information listed below to the Virginia Department of Transportation central office, FAX (804) 786-5722, or mail it to Virginia Department of Transportation, Overweigh/Oversize Permit Section, 1221 East Broad Street, Richmond, Virginia 23219. The letter shall list, in detail:

- a. Name and description of the item being moved;
- b. Overall loaded dimensions for the vehicle configuration to include height, width, length and gross weight;
- c. Explanation of why the load cannot be reduced;
- d. Explanation of why the load cannot be transported by air, rail or water;
- e. Origin and destination specific to Virginia, including mileage and specific intersecting routes (e.g., Route 65 - 1 mile south of Route 2 in Campbell County);
- f. Preferred routes of travel; and
- g. Point of contact in case additional information is needed.

PART IV.
TRAVEL RESTRICTIONS.

§ 4.1. Travel restrictions; holiday travel; days and times of travel; speed limits.

A. Permitted vehicle configurations are allowed to travel on all holidays except the following state observed holidays:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

Note: On the holidays mentioned above, permits will not be valid from noon the preceding weekday through the holiday. If the observed holiday falls on a Monday the permit will not be valid from noon on the preceding Friday through Monday.

B. Normal times of travel for permitted loads is 30 minutes after sunrise to 30 minutes before sunset, Monday through Friday. In heavy traffic areas normal travel times are from 9

a.m. until 4 p.m. Travel is permitted on Saturday from 30 minutes after sunrise to noon. No travel is allowed on Sundays or state observed holidays. The department's Oversize/Overweight Permit Section shall have the authority to route vehicles outside the normal hours of travel or restrict times of travel during normal hours of travel if it is determined necessary giving primary consideration to the safety and well being of the traveling public.

When road conditions, visibility or unfavorable weather conditions make traveling hazardous to the operator or the traveling public, permitted vehicles are not authorized to operate, unless responding to an emergency. Vehicles which are underway when inclement weather occurs shall exit the road at the first available safe location and park in a safe place until the weather clears or until road conditions improve to allow safe travel conditions. Law enforcement judgment shall prevail in all circumstances.

C. Unless otherwise specified within the permit, the maximum speed limit is 10 miles per hour less than the posted speed limit.

PART V.
MANUFACTURED HOUSING.

§ 5.1. Manufactured housing.

Upon request, the applicant may obtain a blanket, single trip or superload permit whenever the dimensions of a manufactured housing unit, exclusive of towing vehicle, are such that the unit cannot be licensed under existing state statutes. A \$1.00 trip fee is levied on mobile homes due to overdimensional features.

- 1. Blanket permit fee is \$45 for one year and \$85 for two years. A \$1.00 trip fee for each move made on the blanket permit is assessed by the Department of Motor Vehicles and is paid monthly to: DMV, 2300 West Broad Street, Richmond, VA 23220.
- 2. Single trip permit fee is \$12 plus \$1.00 trip fee.
- 3. Superload permit fee is \$15 plus a \$1.00 trip fee.
- 4. See Part VI, Escort Services and Other Safety Requirements.
- 5. See Part III, Descriptions, Requirements and Limitations of Special Permits Available for applicable permit requirements.

PART VI.
ESCORT SERVICES AND OTHER SAFETY
REQUIREMENTS.

§ 6.1. Escort certification.

Certification as an escort driver is mandatory for all drivers, regardless of their residencies, who escort overdimensional loads with a width in excess of 12 feet over the highways of the Commonwealth of Virginia. The Virginia Escort Driver Certification Program consists of a written knowledge test which shall be successfully completed before a certificate is issued. Applicants residing outside Virginia can arrange to take the test in their states of residence. For more

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information concerning Escort Certification in Virginia, call the local Department of Motor Vehicles customer service center.

§ 6.2. Escort vehicle requirements.

A. Depending on the route being traveled, escorts may be required for vehicle configurations exceeding 10 feet in width or 14 feet in height or 85 feet in length or when results of an engineering study show that escorts are needed to provide traffic control across restricted bridges and structures.

B. All escort vehicles shall be equipped with a two-way radio and maintain communication with the permitted vehicle driver and any other escort vehicles in the convoy.

C. Escort vehicles shall have signs, descriptive of the load it is escorting, i.e., "Wide Load" or "Oversize Load" or "Overdimensional Load" displayed on the vehicle to be visible to approaching motorist in day or night. Escort vehicle(s) shall maintain adequate distance in front of or behind permitted vehicle configuration (300 to 800 feet) to warn approaching motorists of the oversize or overweight vehicle configuration.

D. At least one amber high-intensity flashing, blinking or alternating light shall be located on top of the escort vehicle. The light shall be visible for a distance of 500 feet or greater.

E. The escort vehicle's headlights and any other steady burning exterior lights shall be turned on while escorting an overweight or oversize permitted vehicle.

F. A front escort vehicle equipped with a hot-pole is required when the overall height of a vehicle configuration exceeds 15 feet. The hot-pole shall extend three inches above the specified overall height of the permitted load.

§ 6.3. Safety requirements.

A. When an overdimensional movement is routed upon any highway which is too narrow for two-way travel at all points, the front escort vehicle or a flagman shall advance to a point where two-way traffic can be maintained, stopping on-coming traffic at that location. When the load reaches the location where traffic is stopped, the overdimensional unit shall halt and allow traffic to clear from both directions, the front escort vehicle or flagman shall then advance to the next part for stopping traffic.

B. Red flags or fluorescent orange flags shall be displayed at each of the four corners of any vehicle configuration that is overwidth or overlength. Flags shall be placed at the extremities of the width or length. Flags must be 18 inches square and in good condition. Flags are not required when the vehicle is overheight or overweight.

C. When required to post a flagman to warn and direct approaching traffic, each flagman shall be wearing a red jacket or vest and equipped with a red flag or paddle reading "STOP" in white letters with red background. Flagmen shall not be less than 18 years of age and capable of carrying out flagging responsibilities.

D. Overdimensional vehicles and loads. One amber flashing light shall be located on top of towing vehicle plus one amber flashing light shall be located on upper rear of

vehicle or load being hauled, towed or self-propelled. Lights shall be visible for 500 feet.

PART VII.

EMERGENCY SERVICES AND NATIONAL DEFENSE MOVES.

§ 7.1. Emergency moves.

Requests for emergency moves will be carefully reviewed. An emergency is defined as "a calamity, existing or imminent, caused by fire, flood, riot, windstorm, explosion or act of God, which requires immediate remedial action to protect life or property." All emergency move requests shall be made through the Virginia Department of Transportation Overweight/Oversize Permit Office at (804) 786-2787. After normal duty hours call the Emergency Operations Center at 1-800-367-7623.

§ 7.2. National defense moves.

The U.S. Department of Defense's Military Traffic Command shall be the sole certifying agency during peacetime for all movements made by an agency declared essential to the national defense. During a national emergency, movements essential to national defense would be far greater in scope, and those not under direct control of one of the military departments or Department of Defense agencies would be certified by the appropriate emergency transportation authority.

PART VIII.

NO COST PERMITS.

§ 8.1. Eligibility requirements.

An applicant is eligible to receive a permit at no cost as described in this section.

1. Containerized cargo. When transporting containerized cargo in a sealed seagoing container bound to or from a seaport, and the seagoing container has been or will be transported by marine shipment, the applicant is eligible to receive a permit at no cost. The contents of the seagoing container shall not be changed from the time it is loaded by the consignor or his agents to the time it is delivered to the consignee or his agents.

2. Coal hauling. When hauling coal from a mine or other place of production to a preparation plant, loading dock or railroad, the applicant is eligible to receive without cost, an overweight permit for coal hauling. No permit shall be valid for the operation of any such vehicle for a distance of more than 35 miles from the preparation plant, loading dock or railroad.

3. Solid waste. When hauling solid waste, other than hazardous waste, the applicant is eligible for an overweight permit at no cost.

4. Concrete haulers. Three axle vehicles used exclusively for the mixing of concrete in transit or at a project site or for transporting necessary components in a compartmentalized vehicle to produce concrete immediately upon arrival at a project site are eligible to receive an overweight permit at no cost.

5. Virginia-grown farm produce. Vehicles used to haul farm produce grown in Virginia are eligible to receive an overweight permit at no cost. Permits are valid only in Accomack and Northampton Counties.

6. Federal and state government agencies. Vehicles registered in the name of the United States Government or state agencies shall receive without cost, an overweight or oversize permit when required to travel across Virginia's highway system.

PART IX.
BUILDING MOVEMENT.

§ 9.1. Applications.

Applications for building movements shall be made through the Virginia Department of Transportation residency office where the move is taking place (see § 13.2 for addresses and phone numbers). Building movement applications are reviewed and approved by the residency office on a case-by-case basis and approval of any move will not set a precedent for another. Building movements are prohibited on the holidays listed in § 9.2.

§ 9.2. Holiday restrictions.

Movement will not be permitted from noon on the preceding day through the following holidays:

- New Years Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

If the observed holiday falls on a Monday the movement will not be permitted from noon on the preceding Friday through Monday.

PART X.
RESPONSIBILITIES.

§ 10.1. Compliance with state laws.

The acceptance of a permit by the applicant is his agreement that the vehicle or object can and will be moved strictly in compliance with the terms set forth in the permit; that the operator and vehicle are properly licensed; that the information given by him and as shown on the permit is correct; and that all legal requirements concerning operational authority imposed by Motor Vehicle Laws of Virginia; Department of Motor Vehicles or the Interstate Commerce Commission have been complied with by the applicant.

§ 10.2. Injury or damage.

The permittee assumes all responsibility for an injury to persons or damage to public or private property caused directly or indirectly by the transportation of vehicles and loads under permit. Furthermore, the permittee agrees to hold the Commonwealth of Virginia, Department of

Transportation and its employees and other state agencies and their employees harmless from all suits, claims, damages or proceedings of any kind, as a direct or indirect result of the transportation of the permitted vehicle.

PART XI.
DENIAL; REVOCATION; REFUSAL TO RENEW; APPEAL;
INVALIDATION.

§ 11.1. Denial; revocation; refusal to renew; appeal; invalidation.

A. An overweight or oversize permit may be revoked upon written findings that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the state highway system or roads for transportation of overweight and oversized vehicle configurations. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

B. Overweight or oversize permits may be denied to any applicant or company, or both, for a period not to exceed six months when the applicant or company or both has been notified in writing by the Department of Transportation designee that violations existed under a previously issued permit.

C. No permit shall be denied or revoked, or renewal refused, until a written notice of the denial or violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the state maintenance engineer or his designee within 10 working days of receipt of written notification of denial or revocation. A written decision by the state maintenance engineer or his designee addressing the appeal must be made within 10 working days to the applicant. The decision of the state maintenance engineer or his designee shall be final. Upon revocation of the permit, it must be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new overweight or oversize permit must be obtained prior to movement on the state highway system.

D. Permits will be invalid if the vehicle or vehicle combination is found by a law-enforcement officer to be operating in violation of permit conditions regarding route, time of movement, licensing, number of axles or any special conditions contained within the permit.

PART XII.
TRANSPORTATION OF EXPLOSIVES, RADIOACTIVE AND
OTHER HAZARDOUS MATERIALS.

§ 12.1. Transportation of explosives, radioactive and other hazardous materials.

A. A person, shipper or carrier transporting or proposing to transport explosives or other hazardous materials shall do so in compliance with all provisions of 49 CFR Parts 100 - 180.

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Hazardous materials are those described by class in 49 CFR Parts 173 - 180.

B. All transporters who haul hazardous waste into Virginia for the purpose of storage, treatment or disposal shall apply for and receive an Environmental Protection Agency (EPA) identification number which is unique to the transporter, and apply for a transportation permit from the Virginia Department of Health.

Transporters of hazardous waste generated outside of Virginia and designated for delivery to a treatment, storage or disposal facility in another state shall conform with the manifest requirements of those states or EPA, as prescribed in 40 CFR Part 262. Specific questions regarding the movement and permitting of hazardous materials and hazardous waste should be addressed to:

Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, Virginia 23240-0009
Phone: 804-762-4021

Questions regarding the movement of Hazardous Materials through tunnels or bridges, or both, shall be addressed to:

Department of Transportation
Hazardous Materials Officer
1221 East Broad Street
Richmond, Virginia 23219
Phone: 804-371-0891

Questions regarding hazardous material spills or incidents shall be addressed to:

CHEMTREC
1-800-424-9300 (24 hours a day)

PART XIII. SERVICE CONTACTS.

§ 13.1. Permit service contact numbers.

Transceiver United, Incorporated
P.O. Box 816348
Dallas, TX 75381
Phone: 1-800-749-7174

Cummins Permit Express
P.O. Box 816348
Dallas, TX 75381
Phone: 1-800-749-7174

Maryland Permit Service
828 Dulaney Valley Road
Towson, MD 21204
Phone: (410) 337-8454

Transcom Incorporated
5900 Sharon Woods Boulevard
P.O. Box 29357
Columbus, OH 43229
Phone: 1-800-888-3651

Xero Fax, Incorporated
282 Central Avenue
Albany, NY 12206
Phone: 1-800-833-3762

State Permits -- National Permits Incorporated
P.O. Box 25498
North Canton, OH 44735
Phone: 1-800-331-4805

Virginia Permit Service, Incorporated (Interstate)
2208 S. Hamilton Road
P.O. Box 32493
Columbus, OH 43232
Phone: 1-800-343-4889

Transport Permits
1729 Falls Avenue
Waterloo, IA 50701
Phone: 1-800-373-9033

NOVA Permit Service
1245 Ch. Ste-Fay
Suite 106
Quebec, PQ G154P2
Phone: 1-800-567-775

Tel-Trans
National Permit Service
3520 N. Post Road, Suite 150
Indianapolis, IN 40226
Phone: 1-800-428-5421

§ 13.2. Virginia Department of Transportation contact numbers.

Central Office:

Virginia Department of Transportation
Hauling Permit Section
1221 East Broad Street
Richmond, Virginia 23219
Phone: 804-786-2787 FAX: 804-786-5722

District Offices and Residencies

Bristol District
P.O. Box 1768
870 Bonham Road
Bristol, VA 24203

District Office 703-669-9903

Residencies

Abingdon 703-676-5503 P.O. Box 729, Abingdon, VA 24212

Jonesville 703-346-1911 P.O. Box 704, Jonesville, VA 24263

Lebanon 703-889-3131 P.O. Box 127, Lebanon, VA 24266

Tazewell 703-988-2566 P.O. Box 270, Tazewell, VA 24561-0270

Proposed Regulations

<p>Wise 703-328-9331 P.O. Box 60, Wise, VA 24293</p> <p>Wytheville 703-228-2153 P.O. Box 531, Wytheville, VA 24382</p> <p style="padding-left: 40px;">Culpeper District P.O. Box 671 1601 Orange Road Culpeper, VA 22701</p> <p>District Office 703-829-7536</p> <p>Residencies:</p> <p>Charlottesville 804-293-0014 P.O. Box 2013, Charlottesville, VA 22902</p> <p>Culpeper 703-829-7687 P.O. Box 671, Culpeper, VA 22701</p> <p>Louisa 703-967-3710 P.O. Box 484, Louisa, VA 23093</p> <p>Warrenton 703-347-6443 P.O. Box 33, Warrenton, VA 22186</p> <p style="padding-left: 40px;">Fredericksburg District P.O. Box 808 Fredericksburg, VA 22404</p> <p>District Office 703-899-4233</p> <p>Residencies:</p> <p>Bowling Green 804-633-5091 P.O. Box 369, Bowling Green, VA 22427</p> <p>Fredericksburg 703-899-4300 P.O. Box 808, Fredericksburg, VA 22404</p> <p>Saluda 804-758-2321 P.O. Box 184, Saluda, VA 23149</p> <p>Warsaw 804-333-3696 P.O. Box 38, Warsaw, VA 22572</p> <p style="padding-left: 40px;">Lynchburg District P.O. Box 11649 4219 Campbell Avenue Lynchburg, VA 24506</p> <p>District Office 804-947-6567</p> <p>Residencies:</p> <p>Amherst 804-946-7631 P.O. Box 190, Amherst, VA 24521</p> <p>Appomattox 804-352-7135 P.O. Box 249, Appomattox, VA 24522</p> <p>Chatham 804-432-8124 P.O. Box 309, Chatham, VA 24531</p> <p>Dillwyn 804-983-2017 P.O. Box 10, Dillwyn, VA 23936</p>	<p>Halifax 804-476-6342 P.O. Box 759, Halifax, VA 24558</p> <p style="padding-left: 40px;">Northern Virginia District 3975 Fair Ridge Drive Fairfax, VA 22033-2906</p> <p>District Office 703-934-7317</p> <p>Residencies:</p> <p>Fairfax 703-359-1220 3565 Chainbridge Road, Fairfax, VA 22030</p> <p>Leesburg 703-771-2522 41 Lawson Road S.E., Leesburg, VA 22075</p> <p>Manassas 703-361-2151 P.O. Box 249, Manassas, VA 22110</p> <p style="padding-left: 40px;">Richmond District 2400 Pine Forest Drive Colonial Heights, VA 22834</p> <p>District Office 804-524-6004</p> <p>Residencies:</p> <p>Amelia 804-561-2411 P.O. Box 185, Amelia, VA 23002</p> <p>Ashland 804-798-8338 523 Washington Hwy., Ashland, VA 23005</p> <p>Chesterfield 804-674-2800 P.O. Box 35044, Richmond, VA 23235</p> <p>Petersburg 804-732-6811 P.O. Box 2168, Petersburg, VA 23804</p> <p>Sandston 804-737-6441 P.O. Box R., Sandston, VA 23150</p> <p>South Hill 804-447-3159 1013 W. Atlantic Street, South Hill, VA 23970</p> <p style="padding-left: 40px;">Salem District 731 Harrison Avenue Salem, VA 24153</p> <p>District Office 703-387-5346</p> <p>Residencies:</p> <p>Bedford 703-586-3552 P.O. Box 446, Bedford, VA 24523</p> <p>Christiansburg 703-381-7200 P.O. Box 420, Christiansburg, VA 24073</p> <p>Hillsville 703-728-2813 P.O. Box 188, Hillsville, VA 24343</p> <p>Martinsville 703-629-2581 P.O. Drawer 3631, Martinsville, VA 24115</p> <p>Rocky Mount 703-483-5262 P.O. Box 609, Rocky Mount, VA 24151</p>
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Proposed Regulations

			Station	Route	Location	Phone
Salem	703-387-5488	P.O. Box 3071, Salem, VA 24153	1. Alberta	85	Alberta	804-949-7336
		Staunton District	2. Aldie	50	Aldie	703-327-6938
		P.O. Box 2249	3. Bland	77	Bland	703-688-4721
		Staunton, VA 24401	4. Carson	95	Carson	804-861-6565
District Office	703-332-9093		5. Dahlgren	301	Dahlgren	703-663-2295
Residencies:			6. Dumfries	95	Triangle	703-221-5344
Edinburg	703-984-4133	P.O. Box 278, Edinburg, VA 22824	7. New Church	13	Temperanceville	804-824-3614
Harrisonburg	703-434-2586	P.O. Box 509, Harrisonburg, VA 22281	8. Sandston	64	Sandston	804-328-3057
Lexington	703-463-3108	P.O. Box 934, Lexington, VA 24450	9. Stephens City	81	Stephens City	703-869-2833
Luray	703-743-6585	P.O. Box 308, Luray, VA 22835	10. Suffolk	58	Suffolk	804-539-0356
Verona	703-248-9320	P.O. Box 940, Verona, VA 24482	11. Troutville	81	Troutville	703-992-4291
		Suffolk District				
		1700 North Main Street				
		P.O. Box 1070				
		Suffolk, VA 23434				
District Office	804-925-2514					
Residencies:						
Accomack	804-787-1550	P.O. Box 270, Accomack, VA 23301				
Franklin	804-562-3194	P.O. Box 496, Accomack, VA 23301				
Norfolk	804-494-2451	P.O. Box 1366, Chesapeake, VA 23237				
Suffolk	804-925-2261	P.O. Box 1070, Suffolk, VA 23434				
Waverly	804-834-3394	P.O. Box 45, Waverly, VA 23890				
Williamsburg	804-253-4832	P.O. Box HD, Williamsburg, VA 23187-3608				

PART XIV.

VIRGINIA DEPARTMENT OF TRANSPORTATION PERMANENT WEIGH STATIONS.

§ 14.1. Permanent weigh stations.

Operators of trucks which have a registered gross weight in excess of 7,500 pounds are required by law to drive their vehicles onto scales for weight inspection as directed by either a police officer or regulatory highway sign. A police officer may require the operator of a truck to drive a distance not to exceed 10 road miles to a scale facility for weight inspection. Refusal to drive onto scales for inspection is a misdemeanor. Locations and telephone numbers for the weigh stations in Virginia are as follows:

MP-66 (Rev. 10-5-93)

General — Hauling Permit Application

Date _____



COMMONWEALTH OF VIRGINIA
Department of Transportation
Hauling Permit Section
1221 East Broad Street, Richmond, Virginia 23219
Phone (804) 786-2787

Designate Permit Type and Term Requested
(Refer to item 18 for selection)
Term: [] Single Trip [] Blanket
Type: _____

Office Use Only

Permit No. _____
Effective Date: _____
Expiration Date: _____
Fee: VDOT _____ DMV _____
Authorized by: _____
Received by: _____
Title: _____

1. Name _____
Address _____
City _____ State _____ Zip Code _____
Federal Identification Number _____

2. Phone Number () _____ Wire Number () _____

3. Item to be moved _____ Transmission Co. _____

*If single trip, indicate desired date of movement and method of transport. [] Haul [] Drive [] Tow Hazardous Commodity [] Yes [] No
If answer is yes, state type _____

ROUTING

*4. From (Origin) _____

*5. To (Destination) _____

If origin or destination is within Virginia, exact location is required. Route of Origin/Destination and exact mileage from a definable location such as a highway intersection. Example: Route 11, 2.5 miles North of Route 716 in Rockbridge County; Route 698, 1.5 miles North of Route 701 in Mecklenburg County.

*6. Preferred Routes of Travel _____

VEHICLE

7. Transport Vehicle Make and Model _____ Towing Capacity _____ Tons

8. Transport Vehicle License No. _____ Trailer License No. _____

9. What weight is vehicle licensed for? _____ What State? _____

SIZE REQUEST

10. Overall HEIGHT: Feet _____ Inches _____ WIDTH: Feet _____ Inches _____ LENGTH: Feet _____ Inches _____

11. Does vehicle have a front overhang? [] Yes [] No
If answer to the above is yes, please indicate overhang: Feet _____ Inches _____

12. What is width of self-propelled truck crane measured from outside of tire to outside tire? Feet _____ Inches _____

WEIGHT REQUEST

13. Gross weight of vehicle or vehicle combination with load _____

14. Number axles on vehicle or vehicle combination _____ wheel base, measure front center axle to rear center axle in.
Feet _____ Inches _____

15. Axle Spacing: Axles 1 to 2 _____ Wt. _____ Axles 2 to 3 _____ Wt. _____
and Weight Axles 3 to 4 _____ Wt. _____ Axles 4 to 5 _____ Wt. _____
Displacement Axles 5 to 6 _____ Wt. _____ Axles 6 to 7 _____ Wt. _____
Estimates

Mobile and Manufactured Housing — Only!

*16. Serial No. of Mobile Home or Modular Unit _____

Proposed Regulations

17. Is the transporting undercarriage permanently attached to the housing unit? _____ Yes _____ No
If the answer to the above is no, please answer the following:
Is the transporting undercarriage a legally licensed vehicle _____ Yes _____ No

PERMIT SELECTION

18. Check permit type needed and compute cost!
- (A) Undivisible loads exceeding 8 feet to 14 feet wide and any combination of singular height, length or weight thereof, designated as a "General Hauling Permit".
- \$10 each, "Single-trip permit" (expires 13 days from issuance).
 - "Blanket Term Permit" (Check appropriate block)
 - \$30 each, - one (1) year
 - \$60 each - Two (2) years
 - \$50 each, building movements (and widths in excess of 14 feet requiring an engineering study). Fee payable whether a permit is issued or not.
- (B) Virginia Department of Motor Vehicles - Mileage Fee Applicable
- \$0.10 per mile fee is charged all vehicles operating under permit which exceeds statutory weight limitations and for vehicles which cannot be legally licensed.
 - A \$1 per trip fee is levied on mobile homes that are unlicensable due to overdimension. Mobile homes are excluded from paying the \$0.10 per mile fee.
- (C) PAYMENT
- Cash. Check or money order payable to Virginia Department of Transportation. Facimile request must be prepaid by a transmission company.
- (D) Divisible Load Exceptions - Permits Issued "Free", designated by name below:
- Coal hauling permits (Use Form MP-104)
 - Old equipment permits
 - Concrete mixed-in-transit permits
 - Farm produce hauling permits
 - Containerized Cargo permits (overweight/overlength)
 - Solid Waste Permit
- } Note:
Complete permit application questions 1, 2, 7, 8, 9, 13, 14, 18(D) and 19 only!
- Fees will NOT be assessed for permits issued to any office or agency of the United States Government, the Commonwealth of Virginia provided the vehicle is registered in the name of such government, its agency, subdivision or municipal corporation.
- (E) ISSUANCE OF PERMITS
- (A) Blanket permits to be issued only by the Central Office.
 - (B) All other permits requiring movement in two or more districts to be issued only by the Central Office.
 - (C) Permits for movements within a district may be issued by the Central Office, District Office or the Residency Office.
- Prepayment Required - Remittance payable Virginia Department of Transportation
- Total amount enclosed \$ _____ check cash money order
- Please allow five (5) working days for processing permit request.
- Note: Facsimile request must be prepaid by a transmission company authorized to handle such transactions.

19. Signature of applicant or designated agent _____

All applicable items on this form must be completed before your request can be considered. Recheck information furnished to avoid delay.

20. Remarks: _____

*Designated item of information not required for blanket permit request.

Facsimile Transmittal Sheet

Date: _____

To: _____

Fax Number: _____

From: Virginia Department of Transportation
Hauling Permit Office - Superload Department
1221 East Broad Street
Richmond, VA 23219
Fax Number: (804) 786-5722
Voice Number: (804) 786-2787 #3

Re: Letter of Variance

To receive a Superload Permit to haul an item with a width in excess of 14'0" or an overall length in excess of 150'0", a letter from the shipper or manufacturer of the item should be mailed or faxed to this office including responses to the following questions in complete detailed statements:

- What is the item and what function does it perform?
- What makes the item irreducible?
- Why can't the item be shipped by air, rail or water?
- What are the overall dimensions and the gross weight of the item and the transport vehicle combined?
- What is the origin and destination specific to Virginia?
(Be sure to include mileage specific intersecting routes.)
- What are the preferred routes of travel?
- Who can we contact if additional information is needed?
(Please include a telephone number.)

Please be advised that only the information contained in the letter of variance submitted to this office will be used in the evaluation process. We ask that you please allow at least five days to receive the results of the evaluation process and the hauling permit if the variance is granted. The contact person listed on the letter of variance will be notified of the results of the evaluation process as soon as they are returned to the Superload Department.

Please contact us if we can be of further assistance to you.

Thank you

Proposed Regulations

11/09/93

Preliminary Review Request

DATE _____

PLEASE ALLOW (10) WORKING DAYS FOR PRELIMINARY REVIEW RESULTS.

Bond Information

Prior to the issuance of a Virginia Hauling Permit for the weight listed below; a cashiers check, letter of credit and/or a surety bond payable to the VA Dept. of Transportation must be posted in the following amounts:

<u>Weight</u>	<u>Bond Amount</u>	
150,100 to 200,000	\$100,000	VA Dept. of Transportation Maintenance Div.-West Wing 1221 E. Broad St. Richmond, VA 23219 ATTN: Mr. Mike Alkhadra
200,001 or more	\$200,000	

After receiving an approval of the Preliminary Review, an original copy of the bond must be on file at the address above and a Formal Hauling Permit Application must be faxed to (804)786-5722 prior to the issuance of a Hauling Permit. For further bond information contact Mr. Mike Alkhadra at (804)786-5082.

COMPANY NAME: ADDRESS: DATE OF MOVE:

CONTACT PERSON: PHONE#

LOAD DIMENSIONS OVERALL DIMENSIONS COMMODITY:

WIDTH:

HEIGHT:

LENGTH:

GROSS WEIGHT:

FROM:

TO:

ROUTES:

TRAILER SERIAL#

GIVE PLACARD INFORMATION: HAZARDOUS COMMODITY: YES () NO ()
IF ANSWER IS YES STATE TYPE:

DIAGRAM OF RIG - SHOW AXLE SPACING & WEIGHT PER AXLE
(Please draw below or attach the diagram on a separate sheet)

FINAL REGULATIONS

For Information concerning Final Regulations, see information page.

Symbol Key

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

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: VR 340-01-04. Vending Sales and Solicitation.

Statutory Authority: § 23-91.29 (a) of the Code of Virginia.

Effective Date: April 18, 1995

Summary:

This regulation is designed to outline the proper vending sales and solicitations policies and procedures for faculty, staff and students.

Agency Contact: Copies of the regulation may be obtained from Stanley E. Taylor, George Mason University, 4400 University Drive, Mail Stop 2A5, Fairfax, VA 22030-4444, telephone (703) 993-8754.

VR 340-01-04. Vending Sales and Solicitation.

PART I. GENERAL PROVISIONS.

§ 1.1. Scope.

This regulation applies to all George Mason University faculty, staff, and students of the university and members of the general public. This regulation applies to all George Mason University locations, owned and leased, including Fairfax Campus, Arlington Campus, Prince William Institute, and George Mason University at the Center for Innovative Technology.

§ 1.2. Policy statement.

George Mason University facilities are intended primarily for the use of its students, faculty, and staff in their efforts to advance the educational mission of the university. No use shall be permitted which is inconsistent with the mission of the university or which shall result in undue competition with local commercial enterprises; nor shall any funds raised in connection with activities conducted in university facilities be destined to purposes which are exclusively religious or political, with exception of recognized student groups, or to personal profit with exception of university employees running special approved projects and programs, or to further causes which are adverse to the well-being of the university.

This vending policy is intended to promote the following goals: protect students, faculty and staff from commercial and noncommercial exploitation and harassment, preserve the aesthetic atmosphere of the university, avoid disruption of the university's educational mission, and to promote safety and security in the university unions and quad areas.

The responsible officer for interpreting and overseeing this policy shall be the Director of Auxiliary Services or his designee.

This policy shall be implemented in conjunction with the procedures and policy found in VR 340-01-03, Space Utilization and Scheduling Policy and Procedures.

§ 1.3. Definitions.

"Commercial activity" means any sale or offer of sale to secure a direct profit for an individual or nonuniversity sponsored group. This includes activities of nonprofit, faculty or staff organizations or individuals who choose (i) to hire outside vendors for the actual selling; (ii) to sell products on a commission basis; (iii) to raise any money for outside groups; or (iv) to sell for the benefit of any individual (unless a charitable activity is determined by the officer in charge of overseeing this policy). Nonfund-raising activities may be construed as commercial activities if they are regular and recurring. Distribution of literature from reserved tables by individuals or nonuniversity organizations is subject to the fees found in Part IV of this policy (otherwise it is subject to the regulations).

"Fund-raising activity" means the solicitation of voluntary philanthropic contributions and the sale of goods hand crafted or home baked by the sponsoring student, faculty or staff organization; shirts and clothing related to the sponsoring organizations; properly licensed recordings of performances by the sponsoring organizations; goods which promote school spirit (GMU related teams and activities) that are properly licensed by the university (if necessary) and are not available in the university bookstore; pamphlet/literature related to the sponsoring organizations; tickets to events; and lottery or raffle tickets. Sales conducted by a campus organization must be conducted for the sole benefit of said campus organization to be considered noncommercial.

"GMU" or "university" means George Mason University.

PART II. POLICY.

§ 2.1. Vending sales and solicitation; exception.

A. The sale or solicitation of any products, goods, food, beverages, or services on the campus is subject to prior authorization and must be conducted in accordance with regulations established by the university. The solicitation of funds through donations also requires prior authorization.

B. Noncommercial activities may be approved on a limited basis with regard to time, place, safety, and the scope of the activity. Fund-raising activities of campus organizations are treated as noncommercial activities. These activities will occur within the guidelines of Sales by Campus Organizations (see Part IV).

Final Regulations

C. Informational activities sponsored by campus organizations and outside organizations are permitted, but are subject to the reasonable guidelines of the authorizing official and require prior approval. These activities will occur within the guidelines found in Parts IV and V.

D. Commercial activities will occur within the guidelines of Sales by Non-GMU Vendors and Entrepreneurs (see Part V).

E. The on-campus sale of products or solicitation of orders by university employees is considered commercial activity, and as such are prohibited, except as provided in this policy, during work hours. This prohibition includes, but is not limited to, sales of Avon products, Mary Kay products and services, Amway, insurance and investment plans, etc. This includes both the actual sales or order taking, as well as distributing catalogs and literature. Departmental mailboxes and bulletin boards are not to be used to distribute sales information or catalogs. Employees, however, may transact such business during breaks and lunch hours, if coworkers are agreeable.

F. Certain locations or buildings may require their own policies regarding vending and advertising which are not subject to this regulation. For the exception, a detailed request must be submitted to the Director of Auxiliary Enterprises, the responsible office for overseeing this policy, for approval. Any approved exception by the university administration will be attached to this regulation.

PART III.

SALES BY CAMPUS ORGANIZATIONS.

§ 3.1. Policy on sales by recognized university organizations.

A. University organizations (student and nonstudent) are permitted to conduct fund-raising activities on campus, subject to the provisions of this policy.

B. Noncommercial sales activities which are occasional, noncontinuous and specific in purpose may be approved for designated areas on campus. Regular, recurring activities are prohibited.

C. Sales conducted by campus organizations must be for the benefit of the campus organization to be considered noncommercial activity. Provisions for proceeds from the sale must be included in the request for approval to conduct the sale. Prior approval of the location and time of any sales activity must be received under the provisions of this policy.

D. Sales in which the proceeds result in personal gain to individuals are considered commercial activity and are subject to Part V of the policy. Campus organizations requesting approval to sponsor a vendor on campus may be required to demonstrate the benefits to be received by the campus organization.

E. A representative or representatives of the sponsoring organization must be present at all times during sales activities involving an outside vendor.

F. Verbal solicitation of sales is strictly prohibited. Sales shall be conducted only at the prompting of the buyer. Harassment of bypassers will not be tolerated.

G. Salespersons may not engage in misrepresentation or fraudulent trade practices nor other activities that are illegal or in violation of university policies.

H. The vendors sponsored by the organization are required to abide by the policies set forth in Part V. Salespersons, the vending company, and the sponsoring organization involved will be held responsible if university policies are violated. Such violations may result in both the campus organization and the company losing the privilege of conducting future sales on campus.

I. Only a limited number of spaces are available. Therefore, the total number of people distributing literature or selling in one place on campus will be limited. Preference for assignment of space will take into account the number of previous approvals for the group or activity, status as a major campus-wide activity, and time constraints of events that may be advertised. Priority will be given to sales activities conducted by students over those conducted by students with vendors.

J. Sales activities will be limited in regards to time, place and manner of the proposed activity as the authorizing official may proscribe. Violation of any of these pre-approved agreements may result in permission for the sale being revoked. Decisions regarding requests will take into account any special circumstances relating to university activities and the burden such activity may place on university security forces and administrative staff.

K. At no time are vending activities to be advertised except in campus newspapers or on approved bulletin boards, unless otherwise indicated in this policy or in writing by an authorizing official. This includes, but is not limited to, the use of E-mail, mailboxes, bulletin boards, fliers on cars, handout fliers to students, sandwich boards, etc.

L. The use of the George Mason University name in association with any product or in the solicitation of donations is strictly prohibited, unless otherwise indicated in writing by the authorizing official.

§ 3.2. Procedures for reserving space for sales and solicitations by campus organizations.

A. Information table (no exchange of money).

1. Complete table space reservation form and return to scheduler at least 10 business days before the date that the organization is requesting.

2. Groups are limited to one six-foot table, unless other arrangements are made.

3. Tables are retrieved from the Student Union Building information desk. A representative of the organization must leave a form of identification at the information desk to obtain the table.

B. Reselling/selling of products (exchange of money).

1. Complete table space reservation form and return to scheduler at least 10 business days before the date that the organization is requesting.

2. Groups are limited to one six-foot table, unless other arrangements are made.
3. A representative of the organization must be present through the duration of the sale.
4. If the organization is selling products made by the organization, there is no fee for selling the items.
5. If the organization is selling products for another company or is sponsoring a non-GMU business to sell products on campus, it shall be subject to Part IV, Sales by Non-GMU Vendors and Entrepreneurs.
6. Whenever a student, faculty or staff organization sells a product or service on campus, a Commercial Endeavors Form must be completed and filed with the fiscal assistant.
7. An authorized representative of the university must sign all contracts between the vendor and a recognized student organization.
8. All vendors must comply with all state and municipal laws. (See procedures for vendors.)

§ 3.3. Fees.

Groups may reserve a maximum of six dates per semester free of charge unless subject to the provisions and fees in Part IV, Sales by Non-GMU Vendors and Entrepreneurs.

PART IV.

SALES BY NON-GMU VENDORS AND ENTREPRENEURS (NON-UNIVERSITY ORGANIZATIONS).

§ 4.1. Sales by nonuniversity organizations.

A. These regulations apply to vendors selling goods or services on campus independently or if sponsored by a recognized student organization. These regulations also apply to outside organizations on campus independently or sponsored by an organization to distribute literature or solicit memberships or both. Vendors wanting to distribute newspapers are regulated by Part V.

B. Commercial sales activities which are occasional and specific in purpose may be approved for designated areas on campus. Commercial sales activity shall not be conducted in residence halls or academic buildings. Regular, recurring activities are prohibited. Vendors are permitted to conduct sales activities on campus subject to the provisions of this policy.

C. All vendors must conform to the laws of the Commonwealth of Virginia.

D. A representative or representatives of the vendor must be present at all times during sales activities involving an outside vendor.

E. Verbal solicitation of sales is strictly prohibited. Sales shall be conducted only at the prompting of the buyer. Harassment of bypassers will not be tolerated. This also applies to the distribution of literature.

F. Salespersons may not engage in misrepresentation or fraudulent trade practices nor other activities that are illegal or in violation of university policies.

G. All vendors must obtain a Fairfax vending license. A copy of the license should be attached to the George Mason vending application. On the day of sales at George Mason, the vending license should be displayed. This does not apply to vendors who distribute literature or solicit memberships.

H. Items must be confined to two six-foot tables, unless otherwise indicated. All other materials must be placed under the tables.

I. The use of the George Mason University name in association with any product or in the solicitation of donations is strictly prohibited, unless otherwise indicated.

J. Unless otherwise indicated, vendors are expected to operate between the hours of 9 a.m. and 7 p.m. Vendors should not arrive for setup after 10 a.m.

K. The Office of University Unions and Student Activities reserves the right to assign vendors to specific locations in the union building and on the quad.

L. University approved faculty and staff organizations will invite vendors to participate in the vendors program based on the following criteria:

1. The products or services that are being sold are unique and not generally available in the local commercial market or from existing campus commercial outlets.

2. The products or services being sold will not conflict with the educational mission of the university.

3. The products or services being sold should be able to relate to the cultural, education, or recreational programs at the university.

M. Subsections A through L of this section shall not apply to the free distribution of literature or information, if such distribution is not commercially motivated.

N. At no time shall GMU grant or deny authorization of distribution of information on its content, unless such distribution is commercially motivated. However, the distribution of said material shall be subject to reasonable time, place and manner restrictions.

O. Only a limited number of spaces are available to non-GMU vendors. Preference for assignment of space will take into account the number of previous approvals for the group or activity, status as a major campus-wide activity, and time constraints of events that may be advertised. Priority will be given to sales activities conducted by students, faculty or staff (alone or in conjunction with vendors) over those conducted solely by vendors.

P. Sales activities will be limited in regards to time, place and manner of the proposed activity as the authorizing official may proscribe. Violation of any of these pre-approved agreements may result in permission for the sale being revoked. Decisions regarding requests will take into account any special circumstances relating to university activities and the burden such activity may place on university security forces and administrative staff.

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Q. At no time are vending activities to be advertised except in campus newspapers or on approved bulletin boards, unless otherwise indicated in writing by an authorizing official. This includes, but is not limited to, the use of E-Mail, mailboxes, bulletin boards, fliers on cars, handout fliers to students, sandwich boards, etc.

R. These vending regulations may not apply to vendors in special campus-sponsored events, as determined by the officer in charge of overseeing this regulation, which occur from time-to-time on campus. However, those events may have their own regulations which apply to vendors. These regulations must be submitted for review by and approval from the authorized university official in charge of overseeing this policy.

§ 4.2. Procedures for reserving space for sales and solicitations by vendors.

A. Information table only (no exchange of money).

1. Complete table space reservation form and return to scheduler at least 10 business days before the date that the vendor is requesting.
2. Vendors are limited to two six-foot tables, unless other arrangements are made.
3. Tables are retrieved from the Student Union Building information desk. A representative of the vendor must leave a form of identification at the information desk to obtain the table.

B. Reselling/selling of products (exchange of money).

1. Complete table space reservation form and return to scheduler at least 10 business days before the date that the vendor is requesting.
2. Vendors are limited to two six-foot tables, unless other arrangements are made.
3. A representative of the vendor must be present through the duration of the sale.
4. Whenever a vendor sells a product or service on campus, a Commercial Endeavors Form must be completed and filed with the fiscal assistant.

§ 4.3. Fees.

A. Vendors may reserve a maximum of six dates per semester at a rate of \$100 per day. If an electrical, phone, gas, water, etc., hook-up is required, then the rate shall be the current prevailing rates. The utility rates charged will be based upon prevailing utility costs furnished by the Director of the Physical Plant. Telephone service shall be coordinated with the university's Office of Telecommunications and Client Support.

B. Payment should be made in the form of a certified check or money order on the morning of the reservation to the University Unions and Student Activities Office designee.

C. These fees apply to informational (no exchange of money) as well as commercial activities (exchange of money).

§ 4.4. Waiver of Part IV.

This part can be waived at the discretion of the authorized university officer (or his designee) in charge of overseeing this policy.

PART V.

SALES AND DISTRIBUTION OF NEWSPAPERS.

§ 5.1. Director of Auxiliary Enterprises.

The Director of Auxiliary Enterprises is charged with establishing a reasonable number of places where any publication—with or without advertisements, student/nonstudent written or distributed, literary or otherwise—may be distributed, subject to approval. This approval will be contingent only upon available space and safety concerns, and not upon content. When distribution is denied due to space limitations, the Director of Auxiliary Enterprises will provide alternative places of distribution.

§ 5.2. The bookstores.

The manager or their agents of the bookstore have the responsibility for determining which publications will be distributed and sold within the bookstores (subject to contractual restrictions).

§ 5.3. Limitations on distribution.

Students, faculty, staff and visitors may distribute literature in person, subject to approval by the authorizing university official in charge of overseeing this policy, at the following locations: Student Unions I and II, Arlington Campus and the Quad at the Fairfax Campus between the following hours of 9 a.m. to 5 p.m., Monday through Friday. Approval of distribution of literature under this part is subject only to space limitations and safety concerns and not to the content of the literature to be distributed. If there is a denial, the authorized university official in charge of overseeing this policy shall find another place or set up another time that the person may distribute literature. At no time shall any person push literature onto unwilling recipients. Further, applicable litter laws will be enforced against any organization or individual carelessly distributing literature on campus.

PART VI.

USE OF BULLETIN BOARDS AND POSTING MATERIAL FOR ADVERTISING.

§ 6.1. Use of bulletin boards and posting material for advertising.

A. No materials shall be posted on trees, light and lamp posts/poles, walkways, windows, walls, doors, or glass panels either inside or outside university buildings. The only exceptions are materials relating to fire, health, or safety (such materials must be approved for posting by the Department of Risk Management); materials posted on bulletin boards; and cars pursuant to the poster policy, Number 54.

B. Bulletin boards are provided for the posting of signs, papers, posters, advertisements, etc., subject to the following:

1. Assigned bulletin boards.

a. *Bulletin boards found in academic areas are assigned for the exclusive use of academic departments (within the department office) and Information Services (within public areas).*

b. *Assigned bulletin boards are labeled and are the responsibility of the department or Information Services to which they are assigned.*

c. *No materials may be posted on assigned bulletin boards without the authorization of the department or Information Services.*

d. *The department or Information Services is responsible for removal of unauthorized materials and for keeping posted materials updated.*

2. *General bulletin boards.*

a. *General bulletin boards are posted in various campus locations and are available for the use and benefit of the campus community.*

b. *Material posted on general bulletin boards is subject to approval by the Office of Information Services.*

c. *Areas designated for the posting of materials are designed to provide a means to advertise campus events, publicize services for students, and inform students, faculty, and staff of off-campus activities. All individuals and organizations posting notices are expected to design and display their materials in a manner respectful of the diverse beliefs, opinions, and attitudes that exist in an institution of higher learning. Posted items must be educational or informative in nature. Items advocating an infraction of any law, ordinance, or official university policy or regulation may not be displayed and are subject to removal by the Office of Information Services.*

PART VII.
AMENDMENTS AND ADDITIONS.

§ 7.1. *Amendments and additions.*

A. *All amendments and additions to the Vendor Sales and Solicitation policy are to be reviewed and approved by the Provost, the Office of the Executive Vice President for Administration and the Office of the Executive Vice President for Finance and Planning.*

B. *This policy shall be reviewed and revised, if necessary, annually.*

TABLE RESERVATION FORM

University Unions and Student Activities

1. Name of Organization/Department _____
2. Contact Name _____
3. Telephone _____
4. Contact Address _____
5. Date(s) Requested _____
6. Please describe the items that will be distributed from your table _____

7. Will you require a TV/VCR setup? _____

All recognized student organizations and GMU departments may schedule one table for up to five consecutive days. This table reservation only confirms the use of one table and the space for seating around the table, not the entire lobby or quad. All student organizations and departments are responsible for retrieving from and returning their table to storage. A representative of the organization or department must be present at the table at all times. All tables are assigned to specific spaces.

I have read and understand the policies and procedures written above.

Signature _____ Date _____

FOR OFFICE USE ONLY

Date Form Received _____

Form Received by _____

Table Assignment Number(s) _____

University Unions and Student Activities
George Mason University

Today's Date _____

Student Commercial Endeavors Agreement

Student Organization or Sponsor: _____

Mailing Address: _____

Name of Registrant: _____

Mailing Address: _____

Goods or Services to be Sold: _____

Requested Campus Location: _____

Fees or Prices Charged to Customers: _____

In consideration of being allowed to sell
I (we) agree to the following as checked below: _____

- 1. To open a separate checking account apart from my (our) personal checking account(s) for the receipt and disbursement of all funds that I (we) procure.
- 2. To furnish individual receipts to every purchaser. This receipt should clearly state the name, address, and telephone number of the entrepreneur and the delivery date of the merchandise.
- 3. To accept no money in advance of delivery and when transactions occur, to furnish each purchaser with a standard receipt.
- 4. To provide a completed event/sales audit sheet to the fiscal Assistant in Student Activities and University Unions within five days after the date of the sale/event.

I agree to sell only in the following locations: _____

on these dates: _____

In each case I guarantee on a money-back basis for the item or service I am selling if it does not meet with the expectations of the purchaser.

I further understand that the granting of this privilege to sell in a specific location does not carry with it University endorsement or guarantee and that the University accepts no responsibility for a customer's default.

Registrant Signature _____ Date _____

UUSA Approval: _____ Date _____

white copy - Organization pink and yellow copy - UUSA staff, 232 K, SUB I

APPLICATION FOR AUTHORIZATION TO VEND AT GEORGE MASON UNIVERSITY

GENERAL INFORMATION

1. Company Name _____

2. Company Address _____

3. Company Telephone Number _____

4. Local Contact Person _____

5. Local Telephone Number _____

6. Local Address _____

7. Description of Product (Please include pictures, samples or brochures when possible.)

8. Please attach a copy of your Fairfax County Vending license.
For licensure information contact: Consumer Affairs, 12000 Government Center Pwky, Suite 127
Fairfax, Virginia 22035 Telephone: 703-222-8432

TERMS AND CONDITIONS

If selected to vend at George Mason University, I agree on behalf of my organization/business to the following terms and conditions:

1. I, the undersigned, agree to indemnify, defend, and hold harmless George Mason University from any liability, damage, expense, cause of action, suits, claims, judgements, and costs of defense arising from injury to persons or personal property which arise out of any act, failure to act, or negligence of the organization, its agents, or employees. All personal property of the organization, its employees agents, licensees, servants, clients, members, guests, or trespassers, shall be at the sole risk of said parties; George Mason University shall not be liable to any such person or party for any damage or loss to personal property thereof.

2. I, the undersigned, will maintain a bond or insurance coverage sufficient to ensure repair or replacement for all George Mason University property, and the property of its employees, that may be lost or damaged as a result of the event.

3. I, the undersigned, will indemnify, defend and save harmless George Mason University from any liability, damage, expense, cause of action, suits, claims, judgments and costs of defense arising from any liens, bills, charges, credits, and other expenses incurred by or placed against me or the company/business for which I am an agent.

4. I, the undersigned, agree to prominently display on my reserved tables the following notice:

THE VENDOR OPERATES AS AN INDEPENDENT BUSINESS ENTITY AND IS NOT AFFILIATED WITH GEORGE MASON UNIVERSITY. GEORGE MASON UNIVERSITY DOES NOT ENDORSE OR RECOMMEND THE VENDOR AND ASSUMES NO RESPONSIBILITY FOR ANY GOODS OR SERVICES PURCHASED FROM THE VENDOR.

SIGNATURE _____ DATE _____

VA.R. Doc. No. R95-446; Filed April 18, 1995, 2:41 p.m.

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) pursuant to § 9-6.14:4.1 A 4; however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: VR 400-02-0006. Rules and Regulations for Section 8 Existing Certificate and Voucher Housing Assistance Payment Payments Program.

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

Effective Date: May 1, 1995.

Summary:

The amendments (i) incorporate provisions concerning the Section 8 existing voucher program; (ii) eliminate regulatory provisions which are no longer necessary or required in administering the programs; (iii) simplify various provisions; and (iv) make minor clarifications and corrections.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220-6500, telephone (804) 782-1986.

VR 400-02-0006. Rules and Regulations for Section 8 Existing Certificate and Voucher Housing Assistance Payments Program.

§ 1. General program description.

The following rules and regulations will be applicable to the assistance of existing *certificate and voucher* rental housing units subsidized under Section 8 of the U.S. Housing Act of 1937 (42 USC § 1437 et seq.), as amended ("section 8") and the applicable rules and regulations ("section 8 rules and regulations"), 24 CFR 882 and 887, promulgated pursuant thereto. These rules and regulations are intended to provide a general description of the authority's processing requirements and are not intended to include all actions which may be involved or required. Notwithstanding anything to the contrary herein, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause. These rules and regulations are subject to change at any time by the board of the authority.

The section 8 existing *certificate and voucher* housing assistance payments program (the "program") provides rental assistance from the U.S. Department of Housing and Urban Development ("HUD") to *eligible families and elderly, handicapped or disabled individuals persons* whose incomes do not exceed the limitations established by HUD pursuant to the section 8 rules and regulations. Once certified as income eligible under the program, such families or individuals must locate and select a rental housing unit in the private market. If such unit meets the housing quality standards established by HUD for decent, safe and sanitary housing, a lease may be executed by the owner of the unit and the family or individual, and the owner and the authority simultaneously

therewith enter into a housing assistance payments contract (the "HAP contract"). The rent under the lease, plus an allowance for utilities (other than telephone) not furnished by the owner, must normally not exceed the fair market rent established by HUD for the area. Any such allowance for utilities shall be established by the authority from time to time in accordance with the section 8 rules and regulations. ~~The tenant pays no more than 30% of his adjusted income (as determined in accordance with the section 8 rules and regulations) for rent and utilities to the extent of the allowance therefor. The amount that the tenant pays for rent and utilities is determined in accordance with the applicable section 8 rules and regulations.~~ The difference between the rent (plus any utility allowance) and the tenant's contribution is paid as housing assistance payments ("housing assistance payments") to the owner by the authority with section 8 subsidy funds received from HUD. The housing assistance payments are applied by the owner toward the payment of the rent on the rental housing unit. The tenant pays directly to the owner the portion of the rent not paid by the authority. In certain instances, the amount of the housing assistance payments may exceed the contract rent, and the balance is paid by the authority to the tenant as a utility allowance.

The authority acts as the statewide administrator of the program by allocating its set-aside of section 8 subsidy funds received from HUD to those local governmental agencies or entities participating or wishing to participate in the program as administrative agents ("administrative agents") of the authority. The authority receives an administrative fee from HUD for its services as administrator of the program, and the authority shares this fee with the administrative agents.

Upon the completion of the moderate rehabilitation of rental housing unit(s) pursuant to the authority's rules and regulations for section 8 moderate rehabilitation program, these rules and regulations shall govern the administration of the section 8 subsidy and the HAP contract for such rental housing unit(s). The term "section 8 rules and regulations" shall, when used with respect to moderate rehabilitation units, be deemed to refer to the rules and regulations applicable to the section 8 moderate rehabilitation program.

Housing assistance payments may be made available to eligible persons and families pursuant to these rules and regulations only if and to the extent that the authority has received from HUD section 8 subsidy funds therefor.

The program shall in all respects be governed by, and administered in accordance with, the section 8 rules and regulations and all other applicable procedures and requirements imposed by HUD with respect to the program. The section 8 rules and regulations and such other procedures and requirements imposed by HUD shall control over any inconsistent provision herein.

The executive director or any authorized officer of the authority acting under his supervision is authorized to act on behalf of the authority with respect to all matters hereunder. The executive director or such authorized officer may delegate all or part of his authority to any employee who is acting under his control and supervision.

§ 2. Implementation of the program.

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The authority shall contact local governments throughout the Commonwealth to determine their interest in participating in the program. If a local government desires to participate in the program, the governing body shall adopt a resolution accepting the program and designating a local governmental agency or entity to act as the administrative agent. ~~The authority and the governing body shall then execute a memorandum of understanding which shall reserve an allocation of funds for the locality if funding is made available from HUD.~~ In the event that funds are not provided by HUD in an amount sufficient to fund all of the reservations by the localities, the authority shall allocate the available funds among the localities in such manner and amounts as the authority shall deem to best serve the purposes of the program. Upon notification from HUD of the availability of funds for the authority, an application for the participation by the locality in the program shall be submitted to HUD for review and approval. If HUD approves the application, the authority and HUD enter into an annual contributions contract ("ACC") which shall set forth the terms and conditions relating to the funding and administration of the program. The authority and the administrative agent shall thereupon sign an administrative services agreement ("ASA") for a term of one year. The ASA shall be renewable annually during the term of the ACC, provided that the administrative agent has complied with the ASA and has otherwise performed to the satisfaction of the authority. After execution of the ASA, the administrative agent shall initiate the administration of the program.

§ 3. Administration of the program.

The administrative agent shall conduct an outreach program satisfactory to the authority and in compliance with the HUD approved equal opportunity housing plan for the purpose of attracting the participation in the program of owners of rental housing units and eligible families and individuals. The administrative agent shall then receive applications from families and individuals who desire to qualify for assistance under the program. The application shall be on such form(s) and shall include such documentation as may be required by the authority and HUD. Based upon such application, the administrative agent shall verify income, family composition, medical and ~~unusual~~ other expenses, and other relevant factors and shall determine whether the family or individual is eligible for assistance under the program. If such family or individual is determined to be eligible, the administrative agent shall calculate such family's or individual's contribution ("~~gross family contribution~~" "*total tenant payment*") to be made for rent and utilities and shall issue such family or individual a certificate of family participation or *housing voucher* which shall be valid for 60 days. The administrative agent shall also advise and brief the family or individual on the procedures and requirements under the program in such manner as the authority shall require.

The family or individual shall locate and select the rental housing unit and shall submit to the administrative agent such forms and documents as may be required by the authority or HUD. The administrative agent shall thereafter meet with the owner of the rental housing unit and complete an inspection of each unit. The administrative agent shall determine if the rental housing unit meets the housing quality

standards established by HUD, shall review the terms of the proposed lease for compliance with the requirements of the program and shall determine rent reasonableness. If the rental housing unit and proposed lease are approved by the administrative agent and if the rent is determined by the administrative agent to be reasonable, the owner and the family or individual may execute the approved lease, and the owner shall sign the HAP contract *with VHDA*. Within such time period as the authority shall require, the administrative agent shall submit to the authority all forms and documents required by the authority for its final approval.

Upon final approval, the authority shall make monthly payments to the owner (and, where required, the tenant) of the rental housing unit in accordance with the terms of the HAP contract. The balance, if any, of the rent shall be paid by the tenant in accordance with the terms of the lease. The owner of the rental housing unit shall comply with all of the terms and conditions of the HAP contract and in the event of a breach thereof, shall be subject to the exercise by the authority of the rights and remedies provided therein. The tenant shall comply with all requirements imposed on him under the section 8 rules and regulations and with all other applicable procedures and requirements established by HUD and the authority with respect to the program.

Persons holding the following offices and positions may not participate as owners in the program during their tenure and for one year thereafter because their relationship with the authority or the program would constitute a prohibited interest under the ACC and HAP contracts: (i) present or former members or officers of the authority or the administrative agent, (ii) employees of the authority or the administrative agent who formulate policy or influence decisions with respect to the program, and (iii) public officials or members of a governing body or state or local legislators who exercise functions or responsibilities with respect to the program. In addition, current members of or delegates to the Congress of the United States of America or resident commissioners are not eligible to participate in the programs as owners.

§ 4. Program funding.

Under the ACC, funding shall be made available for (i) housing assistance payments and (ii) administrative expenses incurred for operation of the program. The ASA shall provide two types of funds which may be used by the administrative agent to pay for expenses incurred for operation of the program:

1. Preliminary expense reimbursement. An administrative agent shall be allowed preliminary expense reimbursement during the first 12 months ~~(24 months if the housing assistance payments are being made in connection with the moderate rehabilitation of the rental housing unit)~~ and any extensions of the operation of the program or until each rental housing unit is leased, whichever comes first. To be eligible for reimbursement, the expense must be directly related to the first year of the operation of the program, e.g., the purchase of nonexpendable equipment, salaries, employee benefits, office supplies, rent, telephone charges, copying costs, etc. Prior to implementation of the program, the local government *administrative agency* shall prepare a proposed budget setting forth the

allocation of funds among the various categories. This proposed budget is reviewed by the authority and is submitted to HUD for approval as part of the local government's application. Preliminary expenses shall be reimbursable only if, and to the extent that, actual expenses are incurred. Payments shall be made in arrears by the authority on a monthly basis upon submission by the administrative agent of such forms and documents as the authority shall deem necessary or appropriate for the review and approval thereof based on the leasing of the units as documented by the administrative agent.

2. Administrative fee income. Administrative fee income is a set fee paid by the authority to the administrative agent for each rental housing unit under lease each month. ~~Payment of this fee normally commences at the beginning of the administrative agent's second year of operation under the program, unless otherwise agreed by the authority and the administrative agent.~~ Adequate records shall be maintained by the administrative agent evidencing costs incurred in the administration of the program. Adjustments to the administrative fee will be made if a surplus of income over expenses occurs. Annually, on July 1 or such other date as shall be agreed to by the authority and the administrative agent, redetermination shall be made regarding the amount of fee income which will be required to fund expenses expected to be incurred in the operation of the program. Such redetermination shall be made based upon a budget *which may be* submitted by the administrative agent and approved by the authority.

§ 5. Responsibilities of the authority and the administrative agent.

Under the terms of the ASA, the authority will provide the following services:

1. Train and supervise the administrative agent and provide the administrative agent with current forms, policies, and procedures.
- ~~2. Process proposals for the moderate rehabilitation of rental housing units, as applicable.~~
3. 2. Provide information to administrative agents to use in their outreach program to owners and income-eligible individuals and families, and pay for the costs of media advertising within the budgeted amount as approved.
4. 3. Provide final review of and action on requests for lease approval submitted by the administrative agent.
5. 4. Make housing assistance payments to owners and, where required, utility payments to individuals and families.
6. 5. Review ~~eviction proceedings~~; review and approve claims by owners as submitted by the administrative agent; *conduct informal hearings*.
7. 6. Administer and enforce HAP contracts with owners.
8. 7. Monitor and enforce compliance with equal opportunity requirements, including the administrative agent's efforts to provide opportunities for individuals and

families seeking housing outside areas of economic and racial concentration.

9. 8. Monitor and enforce compliance with HUD's procedures and policies for program administration and fiscal reporting.

10. 9. Process and approve for payment requisitions for reimbursement of preliminary expenses of the program as submitted by the administrative agent; make administrative fee payments to administrative agents.

11. 10. Review the administrative agent's administration of the program, including unit inspections, at regularly scheduled intervals.

Under the terms of the ASA, the administrative agent shall be responsible for implementing and administering the program with its jurisdiction by performing the responsibilities set forth in the ASA, including but not limited to the following:

1. Provide outreach to owners of rental housing units and income-eligible individuals and families to encourage participation by them in the program, including media advertising.
2. Encourage owners to make their rental housing units available by direct contact with landlords or associations.
3. Complete the certifications and recertifications for tenant eligibility, on such form(s) as the authority may require, to determine tenant eligibility.
4. Verify each applicant's income, assets, family composition, medical and ~~unusual~~ other expenses.
5. Calculate the ~~gross family contribution~~ total tenant payment of each eligible individual or family.
6. Maintain a waiting list of eligible individuals and families.
7. Refer individuals and families from the waiting list to vacant moderate rehabilitation units as applicable.
8. Issue certificates of family participation *or housing vouchers* to eligible individuals and families, as needed, and conduct a briefing for each participant as to the procedures and requirements under the program.
9. Review the leases proposed by owners; determine rent reasonableness; and inspect the rental housing units.
10. Determine the amount of the housing assistance payments and the portion of the rent payable by the tenants.
11. Explain program procedures to owners, including those who have been approached by holders of certificates of family participation *or housing vouchers*.
12. Complete the necessary paperwork for submission of requests for lease approval to the authority by the required deadline.
13. Reexamine tenant income and redetermine amount of rent at least annually beginning ~~90~~ 120 days prior to the anniversary date of each lease *HAP contract*.

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14. Perform inspections of rental housing units at least annually and as requested by the tenants, owners, or the authority.
15. Inform owners of proper eviction proceedings; ~~coordinate eviction proceedings through the authority;~~ and complete and submit to the authority the necessary paperwork for processing claims by the owners.
16. Notify tenants and owners of any changes made in the HAP contract pursuant to the terms thereof.
17. Maintain family folders and other documents and records required by the authority to ensure program efficiency and accuracy.
18. Requisition the authority monthly for reimbursement of preliminary expenses, if applicable; review fee income payments received from the authority for any discrepancies; maintain adequate documentation for all program related costs; and maintain a record of advertising expenses.
19. Inventory at least annually all nonexpendable equipment purchased with section 8 ~~subsidy preliminary~~ funds.
20. Endeavor to ensure compliance with equal opportunity requirements, including efforts to provide opportunities for individuals and families seeking housing outside areas of economic and racial concentration.
21. Maintain a folder of all outreach efforts including copies of ads run, copies of mass mailings, etc.
22. Advise participating individuals and families of other support services available in the community.
23. Maintain all forms and reports according to the requirements of the Virginia Privacy Protection Act (§ 2.1-377 *et seq.* of the Code of Virginia).

VA.R. Doc. No. R95-449; Filed April 20, 1995, 1:42 p.m.

Title of Regulation: VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation Program and Project-Based Certificate Assistance Programs.

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

Effective Date: May 1, 1995.

Summary:

The amendments (i) incorporate provisions concerning the project-based certificate assistance program; (ii) eliminate regulatory provisions which are no longer necessary or required in administering the programs; (iii) simplify various provisions; and (iv) make minor clarifications and corrections.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220-6500, telephone (804) 782-1986.

VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation and Project-Based Certificate Assistance Programs.

§ 1. General program description of programs.

The following rules and regulations will be applicable to the moderate rehabilitation and project-based certificate assistance of rental housing units subsidized under Section 8 of the U.S. Housing Act of 1937 (42 USC § 1437 *et seq.*), as amended ("section 8") and the applicable rules and regulations promulgated pursuant thereto ("section 8 rules and regulations"), 24 CFR 882. These rules and regulations 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 processing of applications. Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any application to waive or modify any provision herein where deemed appropriate by him for good cause. These rules and regulations are subject to change at any time by the authority. *Unless stated otherwise, the rules and regulations shall apply to both the moderate rehabilitation and project-based certificate programs.*

The section 8 moderate rehabilitation program and project-based certificate assistance programs (the "program") is "programs") are designed to:

1. Rehabilitate rental units which are now substandard or have major building components which ~~will within two years need repair or replacement and, in the case of the project-based certificate program, construct new rental units;~~
2. Provide a rental income to an owner that will repay rehabilitation or construction costs, meet monthly operating expenses, and allow a reasonable profit (not to exceed 8.0% in the case of moderate rehabilitation) on the owner's equity investment in the property; and
3. Provide rental subsidies under section 8 to low and very low income families and ~~elderly, handicapped, or disabled persons single individuals~~ living in the rehabilitated or newly constructed units.

Section 8 funding is received from time to time by the authority from the U.S. Department of Housing and Urban Development ("HUD"). The authority then solicits and receives requests from local governmental entities for allocations of such section 8 funds to their localities. After approval of such requests, ~~owners of rental housing persons~~ in such localities may submit applications for section 8 funds under the program programs. The executive director may take such action as he deems necessary or appropriate in order to solicit such requests from local governmental entities and applications from ~~owners of rental housing persons~~ in the applicable localities.

~~Owners of rental housing~~ Persons interested in participating in this program the programs must first submit applications to the authority meeting program requirements described herein. The application shall be in such form and shall contain such relevant information as the executive director may require. Applications will be reviewed and, ~~if appropriate,~~ approved on a first-come, first-serve basis or, in

~~the case of the project-based certificate assistance program, on the basis of such selection criteria as may be determined by the authority to best serve the needs of the locality in which the project is to be located. After receiving an approved application, the authority will inspect the owner's rental unit(s), determine the work items necessary to bring the unit(s) up to the authority's moderate rehabilitation standards, and estimate the cost of these improvements. To be eligible for the program, a unit must require improvements costing a minimum of \$1,000.~~

~~Feasibility of an owner's application will be determined, taking into account current rents or operating expenses, the estimated cost of required improvements, and the terms of available financing. Owner applications will be selected based upon the authority's evaluation of feasible proposals.~~

In the case of rehabilitation, selection of an owner's application is contingent upon the authority's determination that the tenant then occupying the unit to be rehabilitated is eligible to receive section 8 rental assistance under the applicable program. The authority will not permit ineligible families to be displaced by rehabilitation. Therefore, the authority will not provide subsidy under the program for the rehabilitation of units occupied by ineligible families at the time of submission of the application. However, the owner may rehabilitate these units as part of a general upgrading of the property.

In the moderate rehabilitation program, the authority will assist the owner in preparing rehabilitation work write-ups (detailed description of the proposed rehabilitation and estimates of the costs thereof), selecting a contractor, and obtaining financing for the work to be completed. No such assistance is provided under the project-based certificate assistance program.

~~When Prior to the beginning of rehabilitation or new construction is ready to begin and financing has been arranged, the authority will execute an agreement to enter into housing assistance payments contract (the "agreement") which provides that, upon satisfactory completion of all specified improvements in accordance therewith, the unit(s) will be subject to a housing assistance payments contract (the "HAP contract") at a specified rent.~~

Upon completion of all required improvements to the unit(s), the authority and the owner will execute a 45-year HAP contract which establishes the rent ("contract rent") for the unit(s) and describes the rights and responsibilities of the owner and the authority throughout the 45-year term. *In the case of the moderate rehabilitation program, the term of the HAP contract shall be 15 years. In the case of the project-based certificate assistance program, the HAP contract term may not be less than two years and no longer than 15 years or the period of funding for its funding source.*

Subsequent to completion of the required improvements, the authority and its administrative agent ("administrative agent") shall perform their respective administrative functions and responsibilities with respect to the section 8 subsidy and HAP contract as set forth in the authority's rules and regulations for section 8 certificate and voucher existing housing assistance payments program (VR 400-02-0006).

The initial occupant of a rehabilitated unit may be either the owner's current tenant or a family selected by the owner from the waiting list maintained by the administrative agent. *The initial occupant of a newly constructed project-based certificate assistance unit shall be a family selected by the owner from such waiting list.* Vacancies occurring after initial occupancy are to be filled by the owner first from among families on such waiting list. If this waiting list is not sufficient, the owner may solicit his own tenants.

Tenants occupy the units and receive assistance by signing a lease in the form required by the authority and other documentation required by HUD. The tenants must comply with all applicable requirements imposed by HUD under the section 8 rules and regulations and the applicable program. The tenant pays no more than 30% of his adjusted income (as determined in accordance with the section 8 rules and regulations) for rent and utilities, to the extent of the allowance therefor. The difference between the rent (plus any utility allowance) and the tenant's contribution is paid as housing assistance payments to the owner by the authority with section 8 subsidy funds received from HUD. The housing assistance payments are applied by the owner toward the rent on the rental housing unit. The tenant pays directly to the owner the portion of the rent not paid by the authority. In certain instances, the amount of the housing assistance payments may exceed the rent, and the balance is paid by the authority to the tenant as a utility allowance reimbursement.

Housing assistance payments may be made available to eligible persons and families pursuant to these rules and regulations only if and to the extent that the authority has received from HUD section 8 subsidy funds therefor.

The program programs shall in all respects be governed by, and administered in accordance with, the section 8 rules and regulations and all other applicable procedures and requirements imposed by HUD with respect to the program programs. The section 8 rules and regulations and such other procedures and requirements imposed by HUD shall control over any inconsistent provision herein.

The executive director or any authorized officer of the authority acting under his supervision is authorized to act on behalf of the authority with respect to all matters hereunder. The executive director or such authorized officer may delegate all or part of his authority to any employee who is acting under his control and supervision.

§ 2. Eligible rental housing.

The housing to be assisted must be eligible under the applicable section 8 rules and regulations. In addition, housing assisted under the program programs must be located within an area for which the authority has received funding from HUD. The authority must have also been requested by the local governmental entity to make section 8 funding available.

~~In general, any type of single family or multi-family rental housing within this area which requires rehabilitation costing at least \$1,000 per unit in order to meet the authority's moderate rehabilitation standards is eligible. However, the~~

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following special categories of housing are not eligible under the program:

- ~~1. Subject to certain exceptions permitted by HUD, any units subsidized under any federal housing program within the past year.~~
- ~~2. Housing on which the mortgage loan is owned or held by HUD (does not include FHA insured mortgage loans).~~
- ~~3. Nursing homes or housing located on the grounds of any remedial institution. In general, any housing which provides continual medical and psychiatric services is ineligible.~~
- ~~4. Housing owned by a state or general purpose unit of local government unless HUD has approved the site and ownership is transferred to another owner before an agreement is executed.~~
- ~~5. Units for families with children located in a high-rise elevator building, unless approved by HUD.~~
- ~~6. Mobile homes.~~
- ~~7. Owner-occupied housing (cooperative housing is considered rental housing, however, and is eligible for the program).~~

All housing assisted under the program must meet certain site and neighborhood performance requirements established by HUD. Sites must be of adequate size, must be served by adequate streets and private facilities and services, and must be located within a reasonable commuting distance of employment opportunities.

§ 3. Eligible owners.

All owners of eligible property may participate in the program programs with the exception of the following (who are excluded during their tenure and for one year thereafter from participation because their relationship with the authority or the program would constitute a prohibited interest under federal regulations): (i) present or former members or officers of the authority or the administrative agent, (ii) employees of the authority or the administrative agent who formulate policy or influence decisions with respect to the program, and (iii) public officials or members of a governing body or state or local legislators who exercise functions or responsibilities with respect to the program. In addition, current members of or delegates to the Congress of the United States of America or resident commissioners are not eligible property owners.

§ 4. Eligible Eligibility of initial tenants of units to be rehabilitated.

In the case of a unit to be rehabilitated, any tenant occupying a such unit at the time of submission of the application must be eligible to participate in the program satisfy the eligibility criteria in the section 8 rules and regulations in order for that unit to be assisted (subject to certain exceptions established by HUD in the section 8 rules and regulations). Initial tenant eligibility is based on the following criteria:

- ~~1. The tenant must be a single person or must qualify as a family (as defined by HUD) of two or more persons.~~

- ~~2. The tenant must have a family income which does not exceed the applicable income limits established by HUD.~~

- ~~3. The tenant must at the time of submission of the application be occupying a suitably sized unit or a suitably sized unit must be available to him in the same building or complex after rehabilitation. Generally, this requires that there be a living room, kitchen area and bathroom, and at least one sleeping or living/sleeping room for each two persons in the household. Except for husband and wife and very young children, however, persons of the opposite sex should not be required or permitted to occupy the same bedroom.~~

Owners may not combine two or more units, if that rehabilitation activity will result in fewer units than tenants currently in residence and therefore require displacement.

§ 5. Rehabilitation and construction standards.

Housing units rehabilitated under the program programs must meet the following standards:

- ~~1. The authority's moderate rehabilitation standards.~~ Subject to HUD approval, the executive director is authorized to establish and from time to time modify moderate rehabilitation standards which shall specify the standards for work and materials to be incorporated into the rehabilitation of housing units under the program. Housing units proposed for rehabilitation under the program will be inspected by the authority for compliance with the authority's moderate rehabilitation standards. All state and local building codes are incorporated by reference in the moderate rehabilitation standards, and in the event of any conflict or inconsistency between such codes and the standards expressly set forth therein, the more restrictive standards shall control over the less restrictive standards. A copy of these standards shall be available upon request. All deficiencies found in the inspection must be corrected by the owner as part of the owner's rehabilitation activity.

- ~~2. Standards for repair/replacement of major building systems or components in danger of failure.~~ Eligible rehabilitation activities under this program include work to major building systems or components which can be expected to fail within two years. Such work is basically limited to complete wiring, new plumbing pipes, new boiler or furnace or heating distribution pipes, new roof, and exterior structural elements.

- ~~3. Cosmetic, optional, or routine maintenance items.~~ Rehabilitation items not required by the authority are not considered eligible work items under the program. Routine maintenance activities, such as repainting, are also not eligible items. If the owner elects to undertake cosmetic, optional, or routine maintenance work while also doing eligible work, only the cost of the eligible work will be taken into account in calculating the contract rent.

- ~~4. Required energy conserving improvements.~~ Caulking and weatherstripping are required in all units rehabilitated under the program. The authority will require other energy-conserving improvements such as insulating windows and floor, wall and ceiling insulation if economically feasible.

5. ~~Accessibility for the handicapped.~~ Property improvements to make a housing unit accessible to the physically handicapped are eligible under the program. If an owner anticipates making such improvements, the authority will assist in evaluating the work required.

6. ~~Rehabilitation work standards.~~ All rehabilitation work under the program must be completed in a cost efficient and workmanlike manner. Extravagant or luxury quality improvements are not allowable. All work should be of sufficient quality to serve for the duration of the ~~15-year~~ HAP contract, and any improvements for which building permits are required must meet local building code quality standards.

7. ~~\$1,000 minimum.~~ Housing units rehabilitated under the program must require improvements costing at least \$1,000 per unit in order to meet the above standards.

Housing units to be constructed under the project-based certificate assistance program must meet the housing quality standards established by HUD.

§ 6. Determination of contract rents for rehabilitated units.

The contract rent for a unit under the project-based certificate assistance program plus the allowance to be paid by the tenant may not exceed the section 8 existing fair market rent.

The contract rent for a ~~rehabilitated~~ unit under the moderate rehabilitation program is calculated using a two-step process. The authority first computes a "base rent" for the owner's unit and then adds to it the monthly cost of amortizing the owner's rehabilitation expenditure in the following manner.

A. ~~Base rent.~~

1. The base rent shall be calculated in accordance with whichever of the following methods produces the higher rent:

1- a. The average rent collected for the unit during the 18 months preceding the owner's proposal, plus an adjustment factor for inflation and trending; or

2- b. A rent based on the anticipated costs of owning, managing and maintaining the rehabilitated unit. The formula used to calculate this base rent takes into account all operating expenses and allows a return (not to exceed 8.0%) on owner equity.

~~B. Monthly debt service.~~ 2. To the base rent is added the actual or imputed monthly per unit debt service cost for eligible rehabilitation costs, including the cost of any required temporary relocation of current tenants during the rehabilitation period.

~~C. Maximum contract rent for rehabilitated units.~~ Under the moderate rehabilitation program, the contract rent for a rehabilitated unit plus the allowance for any utilities to be paid by the tenant may not exceed the moderate rehabilitation fair market rent established by HUD for a unit of that size. The allowances for any utilities to be paid by tenant will be established by the authority and will be made available to the owner upon request.

~~D. When contract rents are determined.~~ In the moderate rehabilitation program, contract rents are tentatively calculated and the feasibility of the owner's proposal evaluated at several times during the processing period, as information concerning base rents, anticipated rehabilitation costs, and the terms of financing is received by the authority. The final calculation of the contract rent is made after the rehabilitation work has been completed and the owner's construction costs, temporary relocation costs, and financing terms are established, subject to the approval of the authority. *In the project-based certificate assistance program, the initial contract rents shall be as set forth in the agreement unless adjusted in accordance with the section 8 rules and regulations.*

§ 7. Fair market rents for rehabilitated units.

The moderate rehabilitation fair market rents (in the case of the moderate rehabilitation program) and section 8 existing fair market rents (in the case of the project-based certificate assistance program), including the cost of utilities, for units assisted under the program are established from time to time by HUD.

§ 8. Sources of financing for rehabilitation and new construction.

Property owners participating in the program may obtain financing for rehabilitation or construction expenses from a number of sources, including the following:

1. ~~Owner financing.~~ Owners may pay for property improvements using personal savings, personal credit cards or store accounts.

2. ~~Banks, savings and loan associations, and other lending institutions.~~ Owners may obtain financing from any commercial lending institution, including commercial banks, savings and loan associations, and credit unions.

3. ~~Publicly funded or assisted rehabilitation grant and loan program.~~ Owners participating in the program may also qualify for rehabilitation or construction financing made available through the redevelopment and housing authority, housing agency and/or industrial development authority.

4. ~~The authority.~~ The authority may from time to time make financing available for the rehabilitation or construction. In the case of such financing, the application for such financing shall be processed, the improvements shall be completed, and the rehabilitated or constructed unit shall be owned, operated and managed, all in accordance with the authority's rules and regulations for multi-family housing developments, to the extent required by the authority consistent with the section 8 rules and regulations.

§ 9. Federal requirements which the owner must meet during rehabilitation or construction and management.

An owner shall comply with the section 8 rules and regulations and all other applicable federal requirements under the program. In addition, the authority may take into account applicable environmental laws and requirements in evaluating and selecting owner proposals.

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§ 10. Processing of owner proposals.

In the moderate rehabilitation program, owner proposals submitted to the authority will be processed as follows:

Step 1 - Preparation and submission by owner of a proposal.

Step 2 - Preliminary screening of proposal by the authority and disqualification of incomplete or clearly ineligible proposals.

Step 3 - Inspection by the authority of owner's property to determine the work items necessary to bring the unit(s) up to program standards.

Step 4 - Preparation by the authority of list of deficiencies to be corrected, estimate by the authority of rehabilitation costs, and preliminary determination by the authority of project feasibility, *taking into account current rents or operating expenses, the estimated cost of required improvements, and the terms of available financing.* Notification by the authority to the owner of results.

Step 5 - Selection for processing by the authority of owner's proposal.

Step 6 - Determination by the authority of eligibility of tenants currently occupying unit(s) to be rehabilitated. Notification by the authority to the owner of results.

Step 7 - Preparation by the owner and/or the authority of work write-ups, bidding of work, selection of contractor, preparation of lease, obtaining of financing, and final determination of project feasibility.

Step 8 - Execution of an agreement providing that upon owner's satisfactory completion of all required work, the authority will provide section 8 housing assistance payments on behalf of eligible tenants occupying the rehabilitated unit(s). Initial calculation of contract rent(s).

Step 9 - Execution by the owner and contractor of a construction contract and completion of required work. Inspection by the authority of work upon completion.

Step 10 - Recalculation by the authority of contract rent. Execution of a HAP contract by the owner and the authority.

Step 11 - Occupancy of the unit(s) by the assisted tenant(s), who may be the current eligible tenant(s) or tenant(s) selected by the owner from the locality's waiting list. Execution of an approved lease.

Step 12 - Commencement of section 8 housing assistance payments on behalf of the tenant. Performance by the owner, the authority and its administrative agent of all activities required following rehabilitation.

In the project-based certificate assistance program, units will be selected as follows:

Step 1 - *The authority will submit information to HUD concerning the number of units currently under the authority's annual contributions contract with HUD for the authority's section 8 certificate program, the total number of units for which the authority is requesting approval to*

attach assistance, the number of units by unit size to be assisted from each funding source and the estimated termination dates for the HAP contracts.

Step 2 - HUD shall review the information and notify the authority of approval or disapproval.

Step 3 - The authority will advertise in a newspaper of general circulation that the authority will accept applications for project-based certificate assistance.

Step 4 - The owner will submit an application containing a description of the housing to be constructed or rehabilitated, evidence of site control, evidence of proper zoning, the proposed contract rent per unit, information concerning temporary relocation of site occupants, identity of the owner and development team, a management plan, information concerning the financing, the proposed term of the HAP contract and such other information that the authority believes to be necessary.

Step 5 - The owner's proposals will be ranked and selected by the authority, in accordance with selection criteria determined by the authority pursuant to § 1.

Step 6 - The authority will enter into the agreement with the owner.

Step 7 - Execution by the owner and contractor or a construction contract and completion of the required work. Inspection by the authority of work upon completion.

Step 8 - Execution of a HAP contract by the owner and the authority.

Step 9 - Occupancy of the unit(s) by the assisted tenant(s), who may be the current eligible tenant(s) or tenant(s) selected by the owner from the locality's waiting list. Execution of an approved lease.

Step 10 - Commencement of section 8 housing assistance payments on behalf of the tenant. Performance by the owner, the authority and its administrative agent of all activities required following rehabilitation.

§ 11. Requirements following rehabilitation and construction.

Subsequent to completion of the required improvements or new construction (as applicable) for any rental housing unit, the authority and its administrative agent shall perform their respective administrative functions and responsibilities with respect to the section 8 subsidy and HAP contract for such unit as set forth in the authority's rules and regulations for section 8 existing certificate and voucher housing assistance payments program. Following initial leasing of the assisted unit and during the entire period of the HAP contract, the owner must fill all vacancies with section 8 eligible families referred by the authority or its administrative agent, and where required by the authority, the owner shall develop and utilize tenant selection procedures and standards acceptable to the authority. The owner also must maintain the unit in its rehabilitated or newly constructed condition, as applicable, less normal wear and tear, and such maintenance of the unit will be monitored through annual inspections. The owner

may not terminate a tenant lease except for tenant failure to comply with the lease or obligations under state law.

Annually, the authority will process requests by the owner for annual rent adjustments in accordance with the HAP contract. Special rent adjustments may also be approved by the authority and HUD in certain circumstances authorized by the HAP contract. The owner is also eligible to receive payments for vacancy losses, tenant damages and unpaid rent.

In the case of the moderate rehabilitation program, the maximum annual return or profit which the owner may receive from the rental of the assisted unit(s) shall not exceed 8.0% of the owner's equity as determined in accordance with HUD's requirements.

The owner must comply with all terms and conditions of the HAP contract and with the section 8 rules and regulations. ~~The HAP contract between the authority and the owner shall have a term of 15 years, and~~ Any successive owner shall be subject to the terms and conditions of the HAP contract. The authority shall have the right to terminate the HAP contract in accordance with its terms in the event of noncompliance by the owner with its provisions.

VA.R. Doc. No. R95-448; Filed April 20, 1995, 1:42 p.m.

VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: VR 405-01-01. Rules of the Workers' Compensation Commission (REPEALED).

Statutory Authority: § 65.2-201 of the Code of Virginia.

Effective Date: June 14, 1995.

Summary:

This regulation was superseded in its entirety on January 1, 1994, by VR 405-01-06, "Rules of the Virginia Workers' Compensation Commission."

Agency Contact: David W. Haines, Administrative Manager, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2067.

VA.R. Doc. No. R95-452; Filed April 25, 1995, 10:19 a.m.

Title of Regulation: VR 405-01-02. Regulations for Administering Compensation Benefits for Death and Total Disability Due to Coal Workers Pneumoconiosis (REPEALED).

Statutory Authority: § 65.2-201 of the Code of Virginia.

Effective Date: June 14, 1995.

Summary:

This regulation was superseded by the former VR 405-01-01 which has, in turn, been superseded by VR 405-01-06, "Rules of the Virginia Workers Compensation Commission."

Agency Contact: David W. Haines, Administrative Manager, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2067.

VA.R. Doc. No. R95-453; Filed April 25, 1995, 10:19 a.m.

Title of Regulation: VR 405-01-05. Pneumoconioses Guide as Utilized by the Workers' Compensation Commission for Determining Compensable Stages of the Pneumoconioses (REPEALED).

Statutory Authority: § 65.2-201 of the Code of Virginia.

Effective Date: June 14, 1995.

Summary:

This regulation was incorporated into the former VR 405-01-01, which has, in turn, been superseded by VR 405-01-06, "Rules of the Virginia Workers' Compensation Commission."

Agency Contact: David W. Haines, Administrative Manager, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2067.

VA.R. Doc. No. R95-454; Filed April 25, 1995, 10:20 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: State Plan for Medical Assistance Relating to Physical Therapy and Related Services.

VR 460-03-3.1100. Narrative for the 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.

Effective Date: July 1, 1995.

Summary:

The purpose of this action 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 by all authorized providers. This final regulation indicates, consistent with the Governor's direction, that psychological and psychiatric services are not covered in school districts.

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

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(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. It should be noted that these are not new services, but rather new provider guidelines which are being added to the state plan for the first time. Recipients can currently, and will continue to be able to receive, psychological and psychiatric services when provided by any independent practitioners.

Physical therapy, occupational therapy and speech/language therapy, and psychiatric/psychological services may only be provided by school districts, and reimbursed by Medicaid, to children who meet the definition for receipt of Special Education Services as contained in Public Law 94-142. This modification has been reflected in the revisions to the suggested final regulations.

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. 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 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.

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

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 371-8850.

VR 460-03-3.1100. Narrative for the 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 8 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 7 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. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational 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. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and 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

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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 [, or] 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. Repealed.~~

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. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational 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. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the

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Commonwealth. Reimbursement for covered kidney and 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 ophthalmologists, 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*. [4.] ~~Clinical psychologists' services.~~ *Psychotherapy. Limits and requirements for covered services are found under Psychiatric Services ([see] § 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. Home health services shall be provided in

accordance with guidelines found in the Virginia Medicaid Home Health Manual.

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 registered 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 Medicaid recipients who meet home health criteria. 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. All medical supplies, equipment, and appliances shall be provided in accordance with guidelines found in the Virginia Medicaid DME and Supplies Manual.

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.

5. Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. The physician shall complete a written certificate of medical necessity for all durable medical equipment, supplies, and appliances based on an assessment of the patient's needs. The medical and supply provider shall keep a copy of the certificate of medical necessity. The certificate of medical necessity shall be signed and dated by the physician.

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and

procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

8. Only supplies, equipment, and appliances that are considered medically necessary shall be covered. All of the following must be met to be considered medically necessary. The supplies, equipment, or appliance must be:

a. A reasonable and necessary part of the recipient's treatment plan;

b. Consistent with the symptoms, diagnosis, or medical condition of the illness or injury under treatment;

c. Not furnished for the convenience of the recipient, the family, the attending practitioner, or other practitioner or supplier;

d. Necessary and consistent with generally accepted professional medical standards (i.e., not experimental or investigational);

e. Established as safe and effective for the recipient's treatment protocol; and

f. Furnished at the most appropriate level which is suitable for use in the recipient's home environment.

9. Coverage of enteral nutrition (EN) and total parenteral nutrition (TPN) which do not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN and TPN shall not include the provision of routine infant formulae.

E. Physical therapy, occupational therapy, or speech [*language*] pathology [*services*] and audiology services provided by a home health agency or [*medical physical*] 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;

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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 CFR § 440.165, are furnished by or under the direction of a physician or 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 [*physician's order*] 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. [*A local school division may only provide these services to children entitled to services under Public Law 94-142.*]

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. [*A local school division may only provide these services to children entitled to services under Public Law 94-142.*]

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. [*A local school division may only provide these services to children entitled to services under Public Law 94-142.*]

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(e);~~

~~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 /plans*] of care signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall

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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 [physician's order/] plan of care, and indicate the frequency and duration for services. Physician orders [/plans of care] 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 [within 21 days of the order] .

~~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 this section]) 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 this section]) 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. [The patient has reached his maximum progress and a safe and effective maintenance program has been developed.]
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) goal or goals] 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 anorexiants 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. [*The following words and terms used in these regulations shall have the following meaning, unless the context clearly indicates otherwise:*]

"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.

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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* [and] 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. [The patient has reached his maximum progress and a safe and effective maintenance program has been developed.]*

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

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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 [*/related conditions*]. Day health and rehabilitation services shall be covered [*for persons with MR or related conditions*] 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 [*physician's order/*] 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 [*physician's order/*] 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 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

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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 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 sanatoria.

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 XV/II 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

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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. All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall periodically conduct 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) Infection control;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 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; and

(15) Family or caregiver training.

c. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

D. Intermediate Care Facilities for the Mentally Retarded (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 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

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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.

6. All services provided in an IMD and in an ICF/MR shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

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 who are required to provide medically necessary health care interventions or the use of special medical 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 skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

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

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the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

f. A written physician's statement located in the medical record must certify that:

(1) The home health services are required because the individual is confined to his or her home (except when receiving outpatient services);

(2) The patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

(4) These services were furnished while the individual was under the care of a physician.

g. The plan of care shall contain at least the following information:

(1) Diagnosis and prognosis,

(2) Functional limitations,

(3) Orders for nursing or other therapeutic services,

(4) Orders for medical supplies and equipment, when applicable

(5) Orders for home health aide services, when applicable,

(6) Orders for medications and treatments, when applicable,

(7) Orders for special dietary or nutritional needs, when applicable, and

(8) Orders for medical tests, when applicable, including laboratory tests and x-rays.

7. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

8. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Home health aide services. Home health aides must meet the qualifications specified for home health

aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) Speech-language pathology services shall be directly and specifically related to an active written

care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-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 for persons receiving home health services in addition to durable medical equipment and supplies. 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 Pathology Services]

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. [The patient has reached his maximum progress and a safe and effective maintenance program has been developed.]*
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.

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§ 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~~ *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 rehabilitative 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 [or both] 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.

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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 recipient must be "terminally ill," defined as having a life expectancy of six months or less, 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.

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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. All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.

§ 9.3. [Services provided.]

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

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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

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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. Outpatient rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual, with the exception of such services provided in school divisions which shall be provided in accordance with guidelines found in the Virginia Medicaid School Division Manual. *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 405.1710(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.

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~~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 department 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 department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments 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 departments 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 (Supplement 4 has information about the state agency fee schedule) or actual charge (charge to the general public):

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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 department 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 department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments 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 departments 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 percentage 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. Percentage 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

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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. Once 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 4.19 B 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 of 4.19 B.

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

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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.

§ 4. § 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 [within 21 days of the order] .

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 [or the patient has reached his maximum progress and requires the development of a safe and effective maintenance program] ;
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.

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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 personally signed and 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. ~~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. R95-457; Filed April 26, 1995, 11:17 a.m.

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REGISTRAR'S NOTICE: The Department of Medical Assistance Services has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance 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 460-04-8.7. Client Appeals Regulations.

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

Effective Date: June 15, 1995.

Summary:

The purpose of this action is to amend the Commonwealth's regulations concerning Client Appeals (VR 460-04-8.7) due to Item 395(A) of the 1995 Appropriations Act. The regulations affected by this action are Client Appeals (VR 460-04-8.7).

42 CFR Part 431, Subpart E concerns fair hearings for applicants and recipients. This subpart implements § 1902(a)(3) of the Social Security Act (the Act), which requires that a State Plan for Medical Assistance provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements §§ 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Act.

This section of the federal regulations establishes the requirements for a hearing system, recipient notice requirements which must be met by the agency, recipients' rights to hearings, procedures, hearing decisions, due process standards, and corrective actions. DMAS' current MAAP is not required by either federal or state law.

Prior to 1989, the Medicaid appeals system provided two levels of administrative review. The first level was a hearing officer decision and the second (final) review by the Medical Assistance Appeal Board, a part-time board of volunteer professionals. Due to the rapid growth in the Medicaid program during the 1980's and turnover among board members, the Appeal Board was not providing consistent, timely decisions.

In 1989, the General Assembly amended the Administrative Process Act (APA) to allow judicial review of public assistance case decisions. Prior to this, no judicial review of agency case decisions had been permitted. While granting recipients the right to judicial

review, the General Assembly limited the scope of the review to the application of the law to an individual case. Such restriction did not permit the court's review of the validity of the underlying law. In order to address concerns expressed at that time by legal advocates and some legislators that there should be an opportunity for review of legal issues as well as the department's own concerns that its overburdened volunteer Appeal Board could not keep up with the ever-increasingly-complex caseload, review legal issues, and produce a record which would adequately withstand judicial review, DMAS replaced the part-time Medicaid Appeals Board with a panel of three administrative law judges staffed by attorneys.

The present DMAS administrative appeals process involves two levels. If the client is dissatisfied with the local social services agency's decision denying or reducing eligibility or services, the decision may be appealed to DMAS. A DMAS hearing officer conducts a fair and impartial hearing and issues a decision. That decision may be appealed to a circuit court or, at the option of the appellant, to the Medical Assistance Appeal Panel. If MAAP review is sought, the MAAP decision can also be appealed to a circuit court.

On January 28, 1994, an order was entered by Judge James H. Michael, Jr., in the U.S. District Court for the Western District of Virginia in the case of *Shifflett v. Kozlowski* (Civil Action No. 92-00072). Judge Michael ordered DMAS to comply with federal law by issuing final agency decisions to appellants within 90 days of the appeals. The court concluded that both hearing officer decisions and MAAP decisions must comply with the 90-day rule. The department has concluded that it is impossible, with present staff, to complete both levels of appeals within 90 days.

Retaining the MAAP while complying with the court order to complete both the hearing officer and MAAP levels of appeals within the federally required 90 days would require the doubling of the current staff (both hearing officers and members of the MAAP). Such a doubling of the present staff level would result in an additional minimal cost of approximately \$1.5 million per year in order to provide such hearing services to 156 (average number who have applied over the last three years for MAAP reviews) appellants.

The more feasible alternative, short of doubling staff, which does not violate applicants/recipients federal or other due process rights is to eliminate the MAAP. Eliminating the MAAP saves the Commonwealth approximately \$250,000 (MAAP salaries and fringe benefits) without harming recipients' rights under the law. Improvements in the hearing officers' training and skills since the MAAP was first created has resulted in a reduced need for it. Applicants for and recipients of medical assistance who are not satisfied with the hearing officers' decisions may still continue to appeal their cases through the court system.

The order that was entered in *Shifflett v. Kozlowski* (January 14, 1994) imposed a time limit on the entire

hearing process, which includes the hearing officer level of appeal as well as the MAAP. The consent order which allowed the MAAP 90 days as of the date its review is requested is a stay of litigation. This stay stated that the litigation was stayed pending adoption of regulations to eliminate the Medical Assistance Appeals Panel. The stay of the 90-day time frame to process MAAP cases only applied during the period of time reasonably necessary to adopt the regulatory changes to eliminate the MAAP. These regulations take the necessary actions to comply with that order.

In FY '93, 235 requests for review were filed with the MAAP; 162 requests were filed in FY '94, and from July 1994 through the end of December 1994, 72 requests for review were filed. Approximately 11% of hearing officer decisions are appealed to the MAAP and, of that number, approximately 15% have been reversed by the MAAP. This proposal will save approximately \$250,000 (salaries and fringe benefits). These funds have already been redirected to the Office of the Attorney General for further legal support for the agency. There are no localities which are uniquely affected by these regulations as they apply statewide.

Agency Contact: Copies of the regulation may be obtained from Victoria Simmons or Roberta J. Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8850.

VR 460-04-8.7. Client Appeals Regulations.

PART I. GENERAL.

Article 1. Definitions.

§ 1.1. Definitions.

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

"Agency" means:

1. An agency which, on the department's behalf, makes determinations regarding applications for benefits provided by the department; and
2. The department itself.

"Appellant" means an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an adverse action regarding his benefits or his eligibility for benefits.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Division of Client Appeals.

"Final decision" means a written determination by a hearing officer which is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this regulation, conducted by a hearing officer employed by the department.

"Panel" means the Medical Assistance Appeals Panel.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

Article 2. The Appeal System.

§ 1.2. Division of Client Appeals.

The division maintains an appeals system for clients to challenge adverse actions regarding services and benefits provided by the department:

~~4. Hearing officer review.~~ Appellants shall be entitled to a hearing before a hearing officer. See Part II of these regulations.

~~2. Medical Assistance Appeals Panel Review.~~ An appellant who believes the hearing officer's decision is incorrect may, at his option, appeal to the Medical Assistance Appeals Panel for review. See Part III of these regulations.

§ 1.3. Time limitation for appeals.

Hearing officer appeals shall be scheduled and conducted to comply with the 90-day time limitation imposed by federal regulations, unless waived in writing by the appellant or the appellant's representative. ~~Any further review by the panel shall not be considered subject to the 90-day limitation.~~

§ 1.4. Judicial review.

An appellant who believes a final decision as defined herein ~~or a decision of the Medical Assistance Appeals Panel~~ is incorrect may seek judicial review of either pursuant to § 9-6.14:1 et seq. of the Code of Virginia and Part 2A, Rules of the Virginia Supreme Court.

Article 3. Representation.

§ 1.5. Right to representation.

An appellant shall have the full right to representation by an attorney or agent at all stages of appeal.

§ 1.6. Designation of representative.

A. Agents. An agent must be designated in a written statement which is signed by the appellant. If the appellant is physically or mentally unable to sign a written statement, the division may allow a family member or other person acting on appellant's behalf to represent the appellant.

B. Attorneys. If the agent is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant prepared on the attorney's letterhead, shall be accepted as a designation of representation.

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C. Substitution. A member of the same law firm as a designated representative shall have the same rights as the designated representative.

D. Revocation. An appellant may revoke representation by another person at any time. The revocation is effective when the department receives written notice from the appellant.

Article 4. Notice and Appeal Rights.

§ 1.7. Notification of adverse agency action.

The agency which makes an initial adverse determination shall inform the applicant or recipient in a written notice:

1. What action the agency intends to take;
2. The reasons for the intended action;
3. The specific regulations that support or the change in law that requires the action;
4. The right to request an evidentiary hearing, and the methods and time limits for doing so;
5. The circumstances under which benefits are continued if a hearing is requested (see § 1.10); and
6. The right to representation.

§ 1.8. Advance notice.

When the agency plans to terminate, suspend or reduce an individual's eligibility or covered services, the agency must mail the notice described in § 1.7 at least 10 days before the date of action, except as otherwise permitted by federal law.

§ 1.9. Right to appeal.

An individual has the right to file an appeal when:

1. His application for benefits administered by the department is denied. However, if an application for State Local Hospitalization coverage is denied because of a lack of funds which is confirmed by the hearing officer, there is no right to appeal.
2. The agency takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of benefits;
3. His request for a particular medical service is denied, in whole or in part;
4. The agency does not act with reasonable promptness on his application for benefits or request for a particular medical service; or
5. Federal regulations require that a fair hearing be granted.

§ 1.10. Maintaining services.

A. If the agency mails the 10-day notice described in § 1.7 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until the hearing officer issues a final decision unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed

in writing that services are to be terminated or reduced pending the final decision.

B. If the agency's action is sustained on appeal, the agency may institute any available recovery procedures against the appellant to recoup the cost of any services furnished to the appellant, to the extent they were furnished solely by reason of § 1.10 A of these regulations.

Article 5. Miscellaneous Provisions.

§ 1.11. Division records.

A. Removal of records. No person shall take from the division's custody any original record, paper, document, or exhibit which has been certified to the division except as the Director of Client Appeals authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Confidentiality of records. Information in the appellant's record can be released only to a properly designated representative or other person(s) named in a release of information authorization signed by an appellant, his guardian or power of attorney.

C. Fees. The fees to be charged and collected for any copies will be in accordance with Virginia's Freedom of Information Act or other controlling law.

D. Waiver of fees. When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an individual's own review or appeal.

§ 1.12. Computation of time limits.

A. Acceptance of postmark date. Documents postmarked on or before a time limit's expiration shall be accepted as timely.

B. Computation of time limit. In computing any time period under these regulations, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

PART II. HEARING OFFICER REVIEW.

Article 1. Commencement of Appeals.

§ 2.1. Request for appeal.

Any written communication from an appellant or his representative which clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request. This communication should explain the basis for the appeal.

§ 2.2. Place of filing a Request for Appeal.

A Request for Appeal shall be delivered or mailed to the Division of Client Appeals.

§ 2.3. Filing date.

The date of filing shall be the date the request is postmarked, if mailed, or the date the request is received by the department, if delivered other than by mail.

§ 2.4. Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an adverse action described in § 1.7 of these regulations. It is presumed that appellants will receive the notice three days after the agency mails the notice. A Request for Appeal on the grounds that an agency has not acted with reasonable promptness may be filed at any time until the agency has acted.

§ 2.5. Extension of time for filing.

An extension of the 30-day period for filing a Request for Appeal may be granted for good cause shown. Examples of good cause include, but are not limited to, the following situations:

1. Appellant was seriously ill and was prevented from contacting the division;
2. Appellant did not receive notice of the agency's decision;
3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;
4. Unusual or unavoidable circumstances prevented a timely filing.

§ 2.6. Provision of information.

Upon receipt of a Request for Appeal, the division shall notify the appellant and his representative of general appeals procedures and shall provide further detailed information upon request.

Article 2. Prehearing Review.

§ 2.7. Review.

A hearing officer shall initially review an assigned case for compliance with prehearing requirements and may communicate with the appellant or his representative and the agency to confirm the agency action and schedule the hearing.

§ 2.8. Medical Assessment.

A. A hearing officer may order an independent medical assessment when:

1. The hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and
2. The hearing officer determines it necessary to have an assessment by someone other than the person or team who made the original decision, for example, to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence.

B. A medical assessment ordered pursuant to this regulation shall be at the department's expense and shall become part of the record.

§ 2.9. Prehearing action.

A. Invalidation. A Request for Appeal may be invalidated if it was not filed within the time limit imposed by § 2.4 or extended pursuant to § 2.5.

1. If the hearing officer determines that the appellant has failed to file a timely appeal, the hearing officer shall notify the appellant and the appellant's representative of the opportunity to show good cause for the late appeal.
2. If a factual dispute exists about the timeliness of the Request for Appeal, the hearing officer shall receive evidence or testimony on those matters before taking final action.
3. If the individual filing the appeal is not the appellant or an authorized representative of the appellant under the provisions of § 1.6 A, the appeal shall be determined invalid.
4. If a Request for Appeal is invalidated, the hearing officer shall issue a decision pursuant to § 2.24.

B. Administrative dismissal. A Request for Appeal may be administratively dismissed without a hearing if the appellant has no right to appeal under § 1.9 of these regulations.

1. If the hearing officer determines that the appellant does not have the right to an appeal, the hearing officer shall issue a final decision dismissing the appeal and notify the appellant and appellant's representative of the opportunity to appeal to the Medical Assistance Appeals Panel or seek judicial review.
2. If a Request for Appeal is administratively dismissed, the hearing officer shall issue a decision pursuant to § 2.24.

C. Judgment on the record. If the hearing officer determines from the record that the agency's determination was clearly in error and that the case should be resolved in the appellant's favor, he shall issue a decision pursuant to § 2.24.

D. Remand to agency. If the hearing officer determines from the record that the case might be resolved in the appellant's favor if the agency obtains and develops additional information, documentation, or verification, he may remand the case to the agency for action consistent with the hearing officer's written instructions. The remand order shall be sent to the appellant and any representative.

~~E. Removal to the Medical Assistance Appeals Panel.~~

~~In cases where the sole issue is one of state or federal law or policy, the case may, with the appellant's approval, be removed to the Medical Assistance Appeals Panel. The panel shall render a decision on the merits of the appeal solely upon the facts as stipulated to by the appellant and the hearing officer. Otherwise, said cases shall proceed according to the provisions of Part III of these regulations.~~

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~~1. Before such removal, the hearing officer will send the appellant a statement of undisputed facts and identify the legal questions involved.~~

~~2. If the appellant accepts the hearing officer's statement of facts and legal questions involved, he may agree to removal to the panel.~~

~~3. If appellant disputes any facts, wants to present additional evidence, or desires a face to face hearing, removal is inappropriate, and a hearing must be held.~~

Article 3. Hearing.

§ 2.10. Evidentiary hearings.

A hearing officer shall review all agency determinations which are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; and issue a written final decision sustaining, reversing, or remanding each case to the agency for further proceedings.

§ 2.11. Scheduling and rescheduling.

A. To the extent possible, hearings will be scheduled at the appellant's convenience, with consideration of the travel distance required.

~~§ 2.11.1. Rescheduling.~~

B. A hearing shall be rescheduled at the claimant's request no more than twice unless compelling reasons exist.

§ 2.12. Notification.

When a hearing is scheduled, the appellant and his representative shall be notified in writing of its time and place.

§ 2.13. Postponement.

A hearing may be postponed for good cause shown. No postponement will be granted beyond 30 days after the date of the Request for Appeal was filed unless the appellant or his representative waives in writing the 90-day deadline for the final decision.

§ 2.14. Location.

The hearing location shall be determined by the division. If for medical reasons the appellant is unable to travel, the hearing may be conducted at his residence. The agency may respond to a series of individual requests for hearings by conducting a single group hearing:

1. Only in cases in which the sole issue involved is one of federal or state law or policy; and
2. Each person must be permitted to present his own case or be represented by his authorized representative.

§ 2.15. Client access to records.

Upon the request of the appellant or his representative, at a reasonable time before the date of the hearing, as well as during the hearing, the appellant and his representative may examine the content of appellant's case file and all documents and records the agency will rely on at the hearing.

§ 2.16. Subpoenas.

Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request issuance of a subpoena in writing. The request must be received by the division at least five business days before the hearing is scheduled. Such request must include the witness' name, home and work address, county or city of work and residence, and identify the sheriff's office which will serve the subpoena.

§ 2.17. Role of the hearing officer.

The hearing officer shall conduct the hearing; decide on questions of evidence and procedure, and law; question witnesses; and assure that the hearing remains relevant to the issue or issues being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in or observe the hearing.

§ 2.18. Informality of hearings.

Hearings shall be conducted in an informal, nonadversarial manner. The appellant or his representative has the right to bring witnesses, establish all pertinent facts and circumstances; present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

§ 2.19. Evidence.

The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

§ 2.20. Record of hearing.

All hearings shall be recorded either by court reporter, tape recorders, or whatever other means the agency deems appropriate. All exhibits accepted or rejected shall become part of the hearing record.

§ 2.21. Oath or affirmation.

All witnesses shall testify under oath which shall be administered by the court reporter or the hearing officer, as delegated by the department's director.

§ 2.22. Dismissal of Request for Appeal.

Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request in writing; or
2. The appellant or his representative fails to appear at the scheduled hearing without good cause, and does not reply within 10 days after the hearing officer mails an inquiry as to whether the appellant wishes further action on the appeal.

§ 2.23. Post-hearing supplementation of the record.

A. Medical assessment. Following a hearing, a hearing officer may order an independent medical assessment as described in § 2.8.

B. Additional evidence. The hearing officer may leave the hearing record opened for a specified period of time in order

to receive additional evidence or argument from the appellant. If the record indicates that evidence exists which was not presented by either party, with the appellant's permission, the hearing officer may attempt to secure such evidence.

C. Appellant's right to reconvene hearing or comment. If the hearing officer receives additional evidence from a person other than the appellant or his representative, the hearing officer shall send a copy of such evidence to the appellant and his representative and give the appellant the opportunity to comment on such evidence in writing or to reconvene the hearing to respond to such evidence.

D. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether or not it will be used in making the decision.

§ 2.24. Final decision.

After conducting the hearing and reviewing the record and deciding questions of law, the hearing officer shall issue a written final decision which either sustains or reverses the agency action or remands the case to the agency for further action consistent with his written instructions. The hearing officer's final decision shall be considered as the agency's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. A description of the procedural development of the case;
2. Findings of fact which identify supporting evidence;
3. ~~Citations to Conclusions of law which identify supporting regulations and law;~~
4. Conclusions and reasoning;
5. The specific action to be taken by the agency to implement the decision; and
6. ~~Notice of further appeal rights to the Medical Assistance Appeals Panel or state court. This notice shall include information about the right to representation, time limits for requesting review, the right to submit written argument and the right to present oral argument.~~

7. 6. The notice shall state that a final decision may be appealed directly to circuit court as provided in § 9-6.14:16 B of the Code of Virginia and § 1.4 of these regulations. If an optional appeal is taken to the panel, judicial review shall not be available until the panel has acted under Part III.

§ 2.25. Transmission of the hearing record.

The hearing record shall be forwarded to the appellant and his representative with the final decision.

PART III. MEDICAL ASSISTANCE APPEALS PANEL.

Article 1. General.

§ 3.1. Composition of the Medical Assistance Appeals Panel.

~~The panel shall consist of a senior administrative law judge and two administrative law judges who are appointed by the director of the department and shall serve at his pleasure.~~

§ 3.2. Function of the panel.

~~The panel shall review and decide appeals from hearing officers' decisions by evaluating the evidence in the record and any written and oral argument submitted, consistent with relevant federal and state law, regulations, and policy.~~

Article 2. Commencement of Panel Review.

§ 3.3. Commencing panel review.

~~An appeal is commenced when the appellant or his representative files a Request for Review, or another written statement indicating the appellant's belief that the hearing officer's decision is incorrect which includes a written acknowledgement that the 90 day requirement set forth in 42 CFR § 431.244(f) does not apply.~~

§ 3.4. Place of filing Request for Review and Acknowledgement.

~~The Request for Review and Acknowledgement shall be filed with the Medical Assistance Appeals Panel, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219.~~

§ 3.5. Time limit for filing.

~~A Request for Review shall be filed within 12 days from the date the hearing officer's decision is mailed.~~

§ 3.6. Extension of time for filing.

~~An extension of the 12-day period for filing a Request for Review may be granted for good cause shown. A request for an extension shall be in writing and filed with the panel. The request shall include a complete explanation of the reasons that an extension is needed. Good cause includes unusual or unavoidable circumstances which prevented a timely appeal (see § 2.5).~~

§ 3.7. Dismissal.

~~A. A Request for Review shall be dismissed if an Acknowledgement is not executed or if the request was not filed within the time limit imposed by § 3.5 or extended pursuant to § 3.6. If a factual dispute exists about the timeliness of the Request for Review and Acknowledgement, the panel shall receive evidence or testimony on those matters before taking final action.~~

~~B. A dismissal shall constitute the panel's final disposition of the appeal.~~

C. Judgment on the record.

~~If the panel determines from the evidence in the record that the hearing officer's decision was clearly in error and that the case should be resolved in the appellant's favor, the panel may issue a final decision without receiving written or oral argument from appellant.~~

Article 3. Written Argument.

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~~§ 3.8. Right to present written argument.~~

~~An appellant may file written argument to present reasons why the hearing officer's decision is incorrect.~~

~~§ 3.9. Time limitation.~~

~~Written argument by the appellant, if any, shall be filed with the panel within 10 days after the Request for Review is filed.~~

~~§ 3.10. Extension.~~

~~An extension of the time limit for filing written argument may be granted for good cause shown.~~

~~§ 3.11. Evidence.~~

~~No additional evidence shall be accepted with the written argument unless it is relevant, nonrepetitive and not reasonably available at the hearing level through the exercise of due diligence.~~

Article 4. Oral Argument.

~~§ 3.12. Requesting oral argument.~~

~~An appellant or his representative may ask for a hearing to present oral argument with the Request for Review.~~

~~§ 3.13. Place of hearing.~~

~~Hearings shall be held at the Department of Medical Assistance Services' central office in Richmond, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219.~~

~~§ 3.14. Notice of hearing.~~

~~A. Scheduling the hearing.~~

~~Unless judgment on the record is issued pursuant to § 3.7 C, a hearing will be set, and, to the extent possible, scheduled at the appellant's convenience.~~

~~B. Notification.~~

~~As soon as a hearing is scheduled, the person requesting it will be notified at least seven days in advance.~~

~~C. Postponement.~~

~~A hearing may be postponed by the appellant or his representative for good cause shown.~~

~~§ 3.15. Function of the senior administrative law judge.~~

~~The senior administrative law judge shall be the presiding member of the panel and shall issue all decisions on behalf of the panel. If the senior administrative law judge is absent, the director shall appoint one of the administrative law judges to assume the duties of the senior administrative law judge.~~

~~§ 3.16. Recorded hearing.~~

~~The hearing shall be tape recorded.~~

~~§ 3.17. Evidence.~~

~~No additional evidence will be accepted at the oral argument unless it meets the requirements of § 3.11 and is presented to the panel in advance of the hearing.~~

Article 5.

Disposition.

~~§ 3.18. Disposition.~~

~~A. Vote.~~

~~The panel decision is made by majority vote, and the decision may be to sustain, reverse or remand the hearing officer's decision.~~

~~B. Summary affirmance.~~

~~By majority vote the panel may summarily affirm the hearing officer's decision by adopting the hearing officer's decision as its own.~~

~~C. Content of decisions.~~

~~Decisions shall be in writing and shall consist of an opinion stating facts with supporting evidence, reasons and conclusions, citations to supporting law and regulations, and an order describing the specific action to be taken to implement the decision. Information about further appeal rights will also be provided.~~

~~D. Remand to hearing officer.~~

~~A remand order shall clearly state the panel's instructions for further development of the evidence or the legal or policy interpretation to be applied to the facts on record.~~

~~E. The panel decision shall be sent to appellant and his representative and the agency. This shall constitute the panel's final disposition of the appeal.~~

Article 6. Reconsideration.

~~§ 3.19. When reconsideration is accorded.~~

~~A decision unfavorable to the appellant may be reconsidered by the panel on its own motion or upon motion by the appellant or his representative alleging error of fact or application of law or policy.~~

~~§ 3.20. Filing and content.~~

~~Appellant's motion for reconsideration must be filed within 12 days after entry of the panel's decision. This motion shall set forth clearly and specifically the alleged error(s) in the panel's decision.~~

~~§ 3.21. Review.~~

~~The administrative law judge who wrote the majority opinion shall review the sufficiency of the allegations set forth in the motion and may request additional written argument from the appellant.~~

~~§ 3.22. Disposition.~~

~~The ruling on the motion for reconsideration shall be in writing and entered as the final order in the case. If the motion is granted, a new decision will be issued in accordance with § 3.18.~~

VA.R. Doc. No. R95-456; Filed April 26, 1995, 11:16 a.m.

MILK COMMISSION

REGISTRAR'S NOTICE: The Milk Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 7 of the Code of Virginia, which exempts the Milk Commission in promulgating regulations regarding (i) producers' license and base; (ii) classification and allocation of milk, computation sales and shrinkage; and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

Due to the length of the regulation, only the amended section (§ 8) of VR 475-02-02 is being published. The full text of the regulation is available for public inspection at the State Milk Commission, 200 North Ninth Street, Suite 1015, Richmond, Virginia 23219-3414 or at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: VR 475-02-02. Rules and Regulations for the Control, Regulation, and Supervision of the Milk Industry in Virginia (§ 8).

Statutory Authority: § 3.1-430 of the Code of Virginia.

Effective Date: May 1, 1995.

Summary:

The temporary order enables the commission to calculate monthly Class I producer price using reconstructed and reweighed indexes of prices paid and prices received; and the index of prices paid, production items, complete feeds as published by U.S. Department of Agriculture, National Statistics Service. The order also changes the authoritative publishing source of the average cost of the Market Basket for Richmond-Norfolk-Virginia Beach-Portsmouth to the Virginia Department of Agriculture and Consumer Services.

Agency Contact: Copies of the regulation may be obtained from Edward C. Wilson, Jr., State Milk Commission, 200 North Ninth Street, Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013.

VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia (§ 8).

§ 8. Class prices for producer's milk time and method of payment butterfat testing and differential.

A. Class Prices.

	July through February	March through June
1. Class I		
Eastern Virginia Market	\$8.46/cwt.	\$8.26/cwt.
Southwest Virginia Market	\$7.96/cwt.	\$7.76/cwt.
Western Virginia Market	\$8.16/cwt.	\$7.96/cwt.

The above established Class I prices shall be adjusted automatically in accordance with the following procedure, provided:

(1) a. The Eastern Market Class I price shall not exceed the average prevailing Class I price of Federal Order No. 4 and Federal Order No. 5, base zone by more than \$0.80 per hundredweight, nor be less than \$0.30 per hundredweight above the average prevailing Class I price of Federal Order No. 4 and Federal Order No. 5 base zone;

b. The Southwest Market Class I price shall not exceed the prevailing Class I price of Federal Order No. 11 by more than \$0.60 per hundredweight nor be less than \$0.30 per hundredweight above the prevailing Class I price of Federal Order No. 11 and;

c. The Western Market Class I Price shall not exceed the average prevailing Class I price of Federal Order No. 4 and Federal Order No. 5, Northwest Zone by more than \$0.60 per hundredweight nor be less than \$0.30 per hundredweight above the prevailing Class I price of Federal Order No. 4 and Federal Order No. 5, Northwest Zone:

(2) Class I prices shall be increased by an amount determined by multiplying the number of two point brackets that the average bi-monthly composite index exceeds 101.0 by 20; and

(3) Class I prices shall be decreased by an amount determined by multiplying the number of two point brackets that the average bi-monthly composite index descends below 99.0 by 20.

(4) The average bi-monthly composite index brackets shall be in accordance with the following schedule:

Average Bi-monthly Composite Index Brackets	Amount of Adjustment
Nos. through Nos. Continued	Cents Continued
96.9 - 98.9	- 20
99.0 - 101.0	- 0
101.1 - 103.1	+ 20
103.2 - 105.2	+ 40
105.3 - 107.3	+ 60
107.4 - 109.4	+ 80
109.5 - 111.5	+100
111.6 - 113.6	+120
113.7 - 115.7	+140
115.8 - 117.8	+160
117.9 - 119.9	+180
120.0 - 122.0	+200
122.1 - 124.1	+220
124.2 - 126.2	+240
126.3 - 128.3	+260
128.4 - 130.4	+280
130.5 - 132.5	+300
132.6 - 134.6	+320
134.7 - 136.7	+340
136.8 - 138.8	+360

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138.9 - 140.9	+380
141.0 - 143.0	+400
143.1 - 145.1	+420
145.2 - 147.2	+440
147.3 - 149.3	+460
149.4 - 151.4	+480
151.5 - 153.5	+500
153.6 - 155.6	+520
155.7 - 157.7	+540
157.8 - 159.8	+560
159.9 - 161.9	+580
162.0 - 164.0	+600
164.1 - 166.1	+620
166.2 - 168.2	+640
168.3 - 170.3	+660
170.4 - 172.4	+680
172.5 - 174.5	+700
174.6 - 176.6	+720
176.7 - 178.7	+740
178.8 - 180.8	+760
180.9 - 182.9	+780
183.0 - 185.0	+800
185.1 - 187.1	+820
187.2 - 189.2	+840
189.3 - 191.3	+860
191.4 - 193.4	+880
193.5 - 195.5	+900
195.6 - 197.6	+920
197.7 - 199.7	+940
199.8 - 201.8	+960
201.9 - 203.9	+980
204.0 - 206.0	+1000
206.1 - 208.1	+1020
208.2 - 210.2	+1040
210.3 - 212.3	+1060
212.4 - 214.4	+1080
214.5 - 216.5	+1100
216.6 - 218.6	+1120
Continued	Continued

(5) A monthly composite index shall be determined by dividing the sum of the index numbers of the six factors shown in subsections (a x 1), (b x 1), (c x 1), (d x 1), (e x 1), (f x 2) of this subparagraph by seven. The latest available published monthly data for any of the above six factors shall be used in determining the monthly index number.

(a) The U.S. Index of prices paid, taxes, and farm wage rates as published in "Agricultural Prices" by the U.S.D.A.

(b) The U.S. Index of prices received as published in "Agricultural Prices" by the U.S.D.A.

(c) The average price per ton paid by Virginia farmers for 16% dairy feed, as published in "Agricultural Prices" by the U.S.D.A.

(d) The average cost of the market basket for Richmond-Norfolk-Virginia Beach-Portsmouth, as published in "The Market Basket and Retail Food Prices" by the Virginia Department of Labor and Industry.

(e) The average weekly earnings of workers in Virginia manufacturing industries, as published in "Trends in Employment Hours and Earnings Virginia and Statistical Metropolitan Areas" by the Virginia Department of Labor and Industry.

(f) An average of the prevailing Class I prices in North Carolina, Federal Milk Marketing Order No. 4 and Federal Milk Marketing Order No. 11.

(6) The six month average, November 1973 through April 1974, shall equal 100 for each of the above factors for the purpose of determining the monthly index number for each factor.

(7) The current month's Class I price adjustment, if any, shall be determined by a bi-monthly composite index which shall be a simple average of the monthly composite indices of the second and third preceding months.

(8) On or before the seventh day of each month the commission shall determine the Class I prices for the following month and announce same to all licensed processing general distributors.

Effective May 1, 1995, and continuing until November 1, 1996, unless amended or terminated by a majority vote of the commission the following modifications to the indexes will be utilized in determining the monthly composite index used in calculating the Class I price for Virginia State Milk Commission marketing areas pursuant to subdivisions A1(1) through A1(7) of this section:

The U.S. Index of prices paid, taxes, and farm wage rates as published in "Agricultural Prices" by the U.S.D.A. will be determined by using the monthly movement of the reweighed and reconstructed prices paid index (PPITW) as published by the U.S.D.A. The monthly movement of the new prices paid index (PPITW) will be applied each month to the preceding month's revised index of prices paid, taxes, and farm wage rates using December 1994 as the base month.

The U.S. Index of prices received as published in "Agricultural Prices" by the U.S.D.A. will be determined by using the monthly movement of the reweighed and reconstructed prices received index as published by the U.S.D.A. The monthly movement of the new prices received index will be applied each month to the preceding month's revised index of prices received using December 1994 as the base month. The average price per ton paid by all Virginia farmers for 16% dairy feed, as published in "Agricultural Prices" by the U.S.D.A. will be determined by using the monthly movement of the index of prices paid, production items, complete feeds as published by the U.S.D.A. The monthly movement of this index will be applied each month to the preceding month's index of 16% dairy feed, Appalachian using April 1995 as the base month.

The authoritative publisher of the Market Basket for Richmond-Norfolk-Virginia Beach-Portsmouth will be the Virginia Department of Agriculture and Consumer Services. The resultant index numbers derived from

the above calculations will be utilized as specified in the cited regulation.

2. Class I-A. The price used in computing each distributor's obligation for producer milk (of 3.5% butterfat) allocated to Class I-A shall be the Class II price.

3. Class II. The price per cwt. for all markets shall be the monthly Class II price announced by the Market Administrator of the Tennessee Valley Marketing Area (Federal Order No. 11).

4. The total value of base deliveries made in accordance with § 5 B (2) shall be discounted in accordance with the following procedure to reflect the cost savings of transporting, storing and handling of producer milk on a uniform daily bases:

(a) Subtract from each cooperative association's total pounds of base deliveries allocated to Class I sales for each delivery period an amount equal to twice the sum of the differences between the pounds of assigned daily base and the pounds of daily base deliveries which are less than the pounds of assigned daily base for each day during the delivery period.

(b) The net hundredweight (not less than zero) resulting from the above procedure multiplied by \$0.11 will be the amount of discount for base deliveries during the delivery period.

5. Producers or their agents shall not sell milk or offer milk for sale at prices other than those established.

B. Butterfat differential. In making payments to producers and/or cooperative associations of producers required pursuant to § 8, each general distributor shall add for each one-tenth of one percent of average butterfat content above 3.5%, and shall deduct for each one-tenth of one percent of average butterfat content below 3.5% as a butterfat differential an amount per hundredweight announced each month by the Market Administrator of the Tennessee Valley Marketing Area (Federal Order No. 11).

C. Butterfat testing. Butterfat testing shall be conducted in accordance with the following procedure:

1. General distributors shall determine the average butterfat content of all assigned producer milk delivered by each producer who is not a member of a cooperative association, as defined in § 1 by four or more tests made at approximately equal intervals during each delivery period.

2. All assigned producer milk accompanied by a bill of lading that is delivered by a cooperative association to a licensed distributor and is accepted by the distributor shall be paid for by the distributor at a rate that is determined by the butterfat test specified on the bill of lading accompanying the load of milk.

3. The butterfat content of all assigned cooperative association milk delivered by methods other than specified in subdivision C 2 above, shall be determined in accordance with procedures specified by the commission, if mutual agreement between the

cooperative association and the distributor cannot be reached as to the butterfat content of such deliveries.

4. All sampling and testing shall be conducted by persons licensed by the Virginia Department of Agriculture and Consumer Services. These tests shall be made by the Babcock Test, or other tests approved by that department and shall, as directed by the commission, be subject to check tests made by a licensed tester.

D. Time of payment.

1. On or before the last day of a delivery period general distributors shall make a partial payment to producers or cooperative associations of producers for base deliveries received during the first 15 days of the delivery period. The partial payment shall be not less than an amount determined by multiplying the previous month's Class II price for 3.5% milk by the hundredweight of base deliveries for the first 15 days of the delivery period; provided full and final payment for the preceding delivery period was made in accordance with subdivision D 2 of this regulation, otherwise the partial payment shall be not less than an amount determined by multiplying the current Class I price for 3.5% milk by the hundredweight of base deliveries for the first 15 days of the delivery period.

2. On or before the 15th day following the close of a delivery period general distributors shall make full and final payment to producers or cooperative associations of producers for deliveries received during such delivery period pursuant to these regulations.

3. Certified or registered mail may be required for all U.S. Postal Service deliveries of producer payments made by general distributors pursuant to subdivisions D 1 and D 2 of this section when directed in writing by the commission.

4. The commission may, after a hearing, require individual general distributors to make settlement with producers or cooperative associations of producers for deliveries at intervals other than provided in subdivisions D 1 and D 2 of this section.

5. All licensed producers or association of producers supplying base deliveries to processing general distributors located in Norfolk, Portsmouth, Hampton, Newport News or Chesapeake shall be allocated \$0.10 per hundredweight from the total monthly Eastern Market Class I producer payments. This allocation shall be made prorata in accordance with the monthly base deliveries to the processing general distributors located in the aforementioned cities.

6. Before the 15th day of each month the commission shall determine the required monthly equalization payments and give written notice to all affected parties of the amounts payable. The monthly equalization payments shall be made to the Milk Commission Equalization Fund no later than the 25th day of the month subsequent to the end of each delivery period. On or before the last day of each month the commission shall disburse all funds (less a balance necessary to pay

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all bank charges) paid in during the current month in accordance with subdivision D 5 of this regulation.

E. Redistribution of producer losses. When the commission is satisfied that when one or more licensed distributor(s) is/are unable, due to bankruptcy or receivership, to fulfill the financial obligation to producers and/or cooperative associations of producers for base deliveries, the commission may authorize the establishment of a temporary producer redistribution fund to reallocate a distributor's deficient financial obligation.

1. When it is determined that an obligation for base milk deliveries cannot be satisfied, the distributor(s), producer(s) or cooperative associations of producers involved shall notify the commission within five working days of a voluntary filing or adjudication of bankruptcy or receivership, or within five working days of the effective date of this regulation for licensed distributors currently in bankruptcy or receivership. This notification shall be in writing accompanied by copies of pertinent court documents.

2. The producer funded redistribution of losses of an unfulfilled obligation of base deliveries shall be limited to an amount not to exceed the unsecured value of base deliveries calculated in accordance with these regulations.

3. A producer funded redistribution rate shall be established which will be the lesser of the actual dollar loss under subdivision E 2 or the dollars generated by a rate not in excess of .10/cwt., levied on producer's and/or cooperative associations of producers monthly Class I allocated base deliveries for a period not to exceed 12 months for each bankruptcy.

a. Each distributor shall remit to the Milk Commission no later than the 15th of each month the amount collected in accordance with subdivision E 3 above, applicable to the prior months delivery period at the rate established by the commission.

4. The Milk Commission shall disburse all redistribution funds, net of applicable bank charges, collected each month for the redistribution fund by the last day of the month. Funds will be disbursed prorata in relationship to the loss incurred by producers and/or cooperative associations of producers, less applicable bank changes.

5. Producers or cooperative associations of producers shall assign to the commission that portion of their loss claim which pertains to the value of redistributed funds paid on Virginia base deliveries by the commission in order to participate in the producer redistribution fund.

6. Any overpayment or recovery of loss claims assigned to the commission by producers or cooperative associations of producers to the producer redistribution fund shall be disbursed to producers or cooperative associations of producers on a prorata basis of payments made to the fund.

VA.R. Doc. No. R95-442; Filed April 17, 1995, 10:23 a.m.

STATE CORPORATION COMMISSION

FINAL REGULATION

BUREAU OF FINANCIAL INSTITUTIONS

Title of Regulation: VR 225-01-0205. Trust Company Regulations.

Statutory Authority: §§ 6.1-32.26 and 12.1-13 of the Code of Virginia.

Effective Date: April 20, 1995.

Agency Contact: Copies of the regulation may be obtained from James A. Russell, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209, telephone (804) 371-9657. Copying charges are \$1.00 for the first two pages and 50¢ for each page thereafter.

AT RICHMOND, APRIL 18, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI950099

Ex Parte: In the matter of adopting regulations to implement the Trust Company Act

ORDER ADOPTING A REGULATION

By order herein dated February 13, 1995, the Commission directed that notice of a regulation, entitled "Trust Company Regulations" (VR 225-01-0205), which had been proposed by the Bureau of Financial Institutions, be given. Interested parties were invited to submit comments and requests for a hearing on or before April 3, 1995.

Comments in support of adopting the regulation were filed on behalf of the Virginia Bankers Association and Wheat First Butcher Singer, Inc. F.E. Deacon, III, President and Chief Executive Officer of Tredegar Trust Company, also submitted suggestions and supported adoption of the regulation. No request for a hearing was made.

It appears to the Commission that the requirements of notice set forth in the previous order herein have been met. Accordingly, having considered the proposed regulation and the comments of interested parties and of the Staff, the Commission is of the opinion that the regulation, with certain amendments as noted should be adopted.

THEREFORE, IT IS ORDERED:

(1) That the amended regulation entitled "Trust Company Regulations," which is attached hereto, be adopted, and it hereby is adopted.

(2) That, there being nothing further to be done in the matter, this case be dismissed and placed among the ended causes.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall give notice of the adoption of the "Trust Company Regulations" by mailing a copy of this order, together with a copy of the regulation (without editing marks), to all trust companies

authorized to engage in business in Virginia and to all parties who filed comments in this case.

VR 225-01-0205. Trust Company Regulations.

§ 1. Definitions.

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

"Affiliate" means generally a person that directly or indirectly controls, is controlled by, or is under common control with another person. In addition, for purposes of the Trust Company Act, Article 3.2 (§ 6.1-32.11 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a broker-dealer, investment advisor, or investment company is an affiliate of a trust company if a trust company holding company controls the trust company and owns, directly or indirectly, 5.0% or more of any class of the capital stock of the broker-dealer, investment advisor, or investment company.

"Affiliated trust company" means a trust company that is controlled by a trust company holding company. For purposes of the Act, a trust company holding company or other person has control of a trust company or other legal entity if the person owns 25% or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), the person would be presumed to control the trust company or entity; or if the commission determines that the person exercises a controlling influence over the management and policies of the trust company or entity.

"Broker-dealer" means any person selling any type of security other than an interest or unit in a condominium as defined in subdivision (c) of § 55-79.2 of the Code of Virginia or cooperative housing corporation for the account of others or for his own account otherwise than with or through a broker-dealer or agent, but does not include a bank, a trust subsidiary formed under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, an issuer or an agent.

"Bureau" means the Bureau of Financial Institutions of the State Corporation Commission.

"Commission" means the State Corporation Commission.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under Article 3.2 (§ 6.1-32.11 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, 5.0% or more of any class of capital stock of a broker-dealer, investment advisor, or investment company and which also controls a trust company.

§ 2. Preliminary statement; responsibility of the board of directors; meetings of the board.

The board of directors of a trust company shall be composed of individuals who are qualified by character and

State Corporation Commission

business experience to direct the affairs of a corporate fiduciary. The board shall be responsible for directing the affairs of the company in accordance with general principles of law relating to trusts and fiduciaries, Virginia statutory and common law, and other applicable laws and regulations.

The board of directors shall hold a meeting at least once in each calendar month, unless at the request of a trust company the commission allows, for cause, less frequent meetings. A majority of the board must be present for the lawful transaction of business. However, the stockholders may fix, by bylaw, a number not less than five as a quorum.

§ 3. Composition of affiliated trust company board; prohibitions on dual service.

A majority of the board of directors of an affiliated trust company shall consist of members who are neither directors nor officers of any other single affiliate of the trust company.

A director, officer, or employee of a trust company holding company or any affiliate of an affiliated trust company may not serve at the same time as an officer, director, or employee of the trust company, if such individual's employment responsibilities [at an affiliate of the trust company] include (i) the solicitation, sale or trading of securities; (ii) the selection of portfolio managers; (iii) the performing of investment advisory services; (iv) responsibilities [similar that are functionally equivalent] to those listed in (i), (ii), or (iii); or (v) supervision of one or more persons having such responsibilities.

A person who is an agent, broker-dealer, investment advisor, or investment advisor representative shall not serve as an officer or director of a trust company that is not an affiliated trust company.

§ 4. Reports of condition; annual audits.

Trust companies and trust company holding companies shall submit to the bureau statements of their financial condition at such times as the bureau may require. Such statements shall be made in accordance with forms prescribed by the bureau, certified under oath, and attested by at least three directors. The bureau shall call upon all such trust companies and trust company holding companies doing business in Virginia to file these statements. The bureau may require any trust company or trust company holding company to prepare and submit such other reports and material as the bureau deems necessary to protect or promote the public interest.

The board of directors of a trust company shall cause to be made an annual audit of the trust company. The audit shall be performed by a qualified, independent auditor. A separate report, containing a management letter, shall be required and submitted to the bureau in a timely manner.

§ 5. Insurance required.

In addition to the surety bond required by § 6.1-32.17 of the Code of Virginia, a trust company shall maintain insurance coverage that, in kind and amount, provides adequate protection against the risks of the business. The coverage may be provided through the holding company of an affiliated trust company.

§ 6. Investments.

A trust company may invest its capital funds in the investments permitted by law for state banks; it shall reasonably diversify the investment of such funds.

§ 7. Loans to certain persons prohibited.

A trust company shall not make loans or otherwise extend its capital funds to an officer, director, or employee of the trust company, its holding company, and its affiliates.

§ 8. Delegation of trust functions; confidentiality.

A trust company, as trustee, is responsible to settlors and beneficiaries of trusts for carrying out the terms of trust agreements. This responsibility remains with the company regardless of any arrangement that may place one or more trust functions (e.g., administration, custody, investment advice, investment management) with a third party. The trust company must retain sufficient control of trust accounts to be able to meet its responsibilities.

In instances where investment discretion, i.e., the authority to determine what securities or other property shall be bought or sold for an account, is delegated to an affiliate of a trust company, the affiliate must be named by the settlor in the trust agreement [or other controlling document]. The trustee may advise the settlor in selecting such affiliate, and shall review its performance periodically and advise the settlor whether it is in the best interest of the trust to continue the delegation of investment discretion to such affiliate.

A trust company shall preserve the confidentiality of customers' financial information and shall not disclose such information without the consent of the customer.

§ 9. Trust administration as individual, receipt of income from licensed activities prohibited.

An officer or employee of a trust company may not accept or administer, as an individual, any trust account, unless the board of directors approves and monitors the arrangement. While employed by a trust company or receiving remuneration therefrom, an officer or employee of a trust company may not engage in a licensed activity and receive commissions, fees, or other [similar] income from such activity.

§ 10. Securities advice prohibited; exception.

An affiliated trust company may not express an opinion as to the advisability of purchasing any security underwritten by an affiliate, or in which any affiliate makes a market, unless the affiliated trust company clearly discloses in writing that the trust company and the underwriting affiliate are under common ownership, that the affiliate is underwriting or dealing in the security, and that the affiliate has a financial interest in the sale of the security, which interest shall be described.

§ 11. Agency or marketing activity prohibited.

An affiliated trust company may not act as agent for, or engage in any marketing activity on behalf of, its holding company or any affiliate of the trust company. An affiliated trust company may not distribute any prospectus or other

sales literature relating to a particular security, and may not make any such information available at an office of the trust company.

§ 12. Services by affiliate.

When a service is provided to a trust account by an affiliate of a trust company, the service must be allowed under the terms of the governing instrument, by a court or by law, and must be justified by readily available documents relating to the specific account.

§ 13. Referral of securities transactions.

An affiliated trust company may not direct to an affiliated broker-dealer the compensation-producing securities transactions of a trust account, unless:

1. Such action is authorized by the account settlor, the beneficiaries, or a court (depending on the circumstances) by specific written consent or authorization obtained after disclosure of the relationship and the terms of the arrangement;
2. Use of the affiliated broker-dealer is in the best interest of the account;
3. In the case of employee benefit trusts, a reasoned opinion of counsel is obtained to the effect that the proposed use does not violate the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.); and
4. The trust company has established adequate safeguards against potential abuses (e.g., "churning").

§ 14. Purchases from affiliate prohibited; exceptions; terms.

Section 6.1-32.14:2 of the Code of Virginia provides that an affiliated trust company may not, during the underwriting period, purchase from an affiliated broker-dealer any security that is being underwritten by that broker-dealer.

Outside the scope of § 6.1-32.14:2 of the Code of Virginia, an affiliated trust company may not purchase any security or other property from an affiliate, except as authorized by a provision of a governing trust instrument [or other controlling document] , by a court, or in accordance with specific permission given by law (e.g., § 26-44.1 of the Code of Virginia). Any such purchase from an affiliate shall be made at arm's length and on terms no less stringent than those that would apply in a transaction with an unrelated third party.

§ 15. Separate offices required.

An affiliated trust company shall maintain offices that are separate and clearly distinguishable from the offices of its holding company and every other affiliate of the trust company. If the offices of the trust company are in the same building with those of a broker-dealer affiliate, the trust company's offices shall be on a different floor from the offices of the broker-dealer.

VA.R. Doc. No. R95-443; Filed April 20, 1995, 10:30 a.m.

ADMINISTRATIVE LETTERS

BUREAU OF INSURANCE

April 14, 1995

Administrative Letter 1995-1

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Supplemental Reports for Potentially Noncompetitive Lines and Subclassifications of Commercial Liability Insurance as Required by Virginia Code Section 38.2-1905.2 Not Due until May 1, 1996

The Supplemental Reports for lines and subclassifications of commercial liability insurance designated by the State Corporation Commission as potentially noncompetitive will not be due until May 1, 1996. Please be advised that no Supplemental Reports or special data call reports are due this year. It should be noted, however, that the Supplemental Reports due in 1996 will include years 1994 and 1995.

Insurers will be advised in January of 1996 of any changes in the reporting format, the lines and subclassifications that have been designated as potentially noncompetitive, and any additional reporting instructions.

Please advise the appropriate data reporting departments that no Supplemental Reports are due in 1995. If you have any questions, please call Eric Lowe at (804) 371-9628.

/s/ Steven T. Foster
Commissioner of Insurance

VA.R. Doc. No. R95-444; Filed April 20, 1995, 10:56 a.m.

April 14, 1995

Administrative Letter 1995-2

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Report of Certain Liability Claims as Required by Virginia Code Section 38.2-2228.1 Due September 1, 1995

Virginia Code Section 38.2-2228.1 requires that all liability claims for commercial liability insurance as defined in Sections 38.2-117 (Personal Injury Liability) and 38.2-118 (Property Damage Liability) be reported annually to the State Corporation Commission (SCC). The SCC Bureau of Insurance has developed the attached exhibits and reporting forms that insurers should utilize to meet the data reporting requirements of the Code.

A separate report must be submitted for each market definition by each insurer not exempt from the data reporting requirements. For the purposes of the data report, "insurer" shall mean an individual insurer or a group of insurers under common ownership or control. A combined report must indicate that it is a group report and must include the group name and group NAIC number as well as the name and NAIC number of each individual insurer comprising the group.

State Corporation Commission

The reports, or exemption forms, must be filed by September 1, 1995.

Mutual assessment insurers are exempt from all reporting requirements. Other insurers with 1994 written premiums for "Other Liability," "Products Liability," and "Medical Professional Liability" (lines 17, 18, and 11 respectively of page 14 of the Annual Statement) combined totaling \$100,000 or less are exempt from the data reporting requirements. Insurers claiming the premium volume exemption should refer to Exhibit 1 for instructions on completing the exemption form (Exhibit 2). Any insurer who is not eligible for an exemption must complete a reporting form for all lines with written premium; THERE IS NO BY LINE EXEMPTION FOR LINES WITH LESS THAN \$100,000 IN WRITTEN PREMIUMS. The exemption threshold of \$100,000 applies only to the sum of lines 11, 17, and 18 from the NAIC annual statement.

Insurers not exempted by the paragraph above shall report data in the detail prescribed by the report formats. If some information is not available, insurers should estimate appropriate figures to complete the report forms. Any insurer that is experiencing difficulty in completing typed reporting form numbers VCR1, VCR2, VCR3, VCR4, VCR5, and VCR6 may reproduce these forms, enlarging the size of the page but not changing the layout or format, in order to insure readability.

The market definitions provided in Exhibit 3 are to be used as a guide in defining specific markets which are required to be reported. Insurers should also report the required information for policies written under any comparable classification in use by the individual insurer.

Insurance Services Office (ISO) members or subscribers should contact their liaison officer for assistance regarding the computerized transmission of data.

Should you have any questions, please direct them to:

Eric C. Lowe
Senior Insurance Analyst
Property and Casualty Division
State Corporation Commission
Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219
(804) 371-9628

Virginia Code Section 38.2-218 provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than \$5,000. Failure to file a substantially complete and accurate liability claims report by the due date may be considered a willful violation and may subject the insurer to an appropriate penalty.

/s/ Steven T. Foster
Commissioner of Insurance

EXHIBIT 1 GENERAL LIABILITY CLAIMS REPORT COMPLETE INSTRUCTIONS AND DEFINITIONS

The following outline will assist insurers in properly completing the claims reports. Determine the applicable individual reporting method and follow the instructions for that section only. Insurers should review the definitions section at the end of this exhibit for further completion instructions.

Reports for all insurers, regardless of reporting method, must include the complete verbal name and NAIC number of each individual insurer. The group name and number are required if the reports are on a group basis. Be sure to list all insurers within the group.

Reports must be filed by September 1, 1995.

Determine the applicable reporting method and refer to the following specific instructions for that method.

I. EXEMPT INSURERS:

- A. If the insurer had no written premium in 1994 for Line 18 - Products Liability, Line 17 - Other Liability, and Line 11 - Medical Professional Liability as reported on page 14 of the annual statement, then only Exhibit 2 of this Administrative Letter must be filed. Please indicate in the "Zero Premium" column A of Exhibit 2 all of the lines with no written premiums.
- B. If the insurer had a combined written premium in 1994 totaling \$100,000 or less for Line 17 - Other Liability, Line 18 - Products Liability, and Line 11 - Medical Professional as reported on page 14 of the annual statement, file only Exhibit 2. Indicate those lines with written premiums and those lines with no written premiums by checking the appropriate Column of Exhibit 2.
- C. Mutual Assessment insurers are exempt from the data reporting requirements and no response to this Administrative Letter is required.

NOTE: Insurers exempt under A or B above must file Exhibit 2 by September 1, 1995, to record the exemption from the data reporting requirements.

II. INSURERS USING ISO MAGNETIC TAPE REPORTING SERVICES:

- A. The ISO Liaison Officer will be the insurer's contact for the procurement of these services.
- B. Tapes submitted from ISO must be clearly labeled with the names and NAIC numbers of all of the insurers for which data is included on the tape. This label must be attached to the tape reel.
- C. Any corrections to the tape data submitted must be made on the ISO paper reports that accompany the tapes. All reports with corrections made must be clearly noted in red ink on the first page of the corrected report.

- D. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1994. All other market definitions should be reported by ISO on the tape.
- E. The tape, Exhibit 2, and the corrected paper reports, if any, must be filed by September 1, 1995. Failure to submit by this date may subject the insurer to penalties as outlined in the Administrative Letter.

III. INSURERS REPORTING ON PAPER (VCR1-6):

- A. Do not change the report layout or format. The form may be enlarged to ensure readability and to ease completion.
- B. Only one report should be submitted per market definition and per coverage code. **DO NOT REPORT SUBLINES WITHIN MARKET DEFINITIONS. ALL SUBLINES SHOULD BE COMBINED WITHIN THE APPLICABLE MARKET DEFINITION.** Coverage codes are shown on VCR1 (1/95) and market definitions are shown in Exhibit 3. Do not combine markets or sublines and do not separate classifications within a market definition. **A REPORT MUST BE SUBMITTED FOR EACH LINE WITH WRITTEN PREMIUMS. THE EXEMPTION IS NOT A LINE BY LINE EXEMPTION. IF YOU ARE NOT EXEMPT PER I. ABOVE, A REPORT MUST BE COMPLETED FOR EACH LINE.**
- C. Deductible and non-deductible liability data should be combined within market definitions.
- D. Bodily Injury, Property Damage, and Medical Payments data should be combined within market definitions.
- E. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1994.
- F. The reports and Exhibit 2 must be filed by September 1, 1995. Failure to submit by this date may subject insurers to penalties as outlined in the Administrative Letter.

IV. REPORTING ON DISKETTE PROHIBITED

- A. Information will not be accepted on computer diskette from any insurer for the 1995 reports.

Calendar Year Earned Premium

Report premium that is earned during the Calendar year beginning January 1st and ending December 31st for each year.

Incurred But Not Reported (IBNR) Loss and Allocated Loss Adjustment Expenses

Report IBNR loss and allocated loss adjustment expense reserves segregated by year of accident or occurrence at annual intervals for each accident year. IBNR is the amount held in reserve for claims which have occurred but have not yet been reported, plus the amount held in reserve for the deficiency (or redundancy) of know case reserves. It is the estimated ultimate incurred loss and allocated loss adjustment expenses for each accident year as of the

particular evaluation date, minus the incurred loss and allocated loss adjustment expenses for all reported accidents as of the particular evaluation date.

Evaluation Dates

Report data on a cumulative basis for the valuation points indicated up to 108 months for IBNR (VCR6) and 114 months for all other (VCR 2-5) requested information. The data should be evaluated through June 30, 1994, for all data items unless otherwise specified in the question.

Market Definitions

The attached Insurance Services Office (ISO) Commercial Statistical Plan (CSP) subline and classification codes are to be used as a guide in defining specific markets which are required to be reported. Insurers should also report the required premium and loss data written under any comparable classification in use by the individual insurer.

Attorney's Fees

Attorney's fees are all expenses billed by an attorney to the insurer including hourly billings, expert or other witnesses, stenographic, summons and copies of documents.

State Corporation Commission

EXHIBIT 2 EXEMPTION REQUEST FORM

INSURER _____

NAIC # _____

Check Column A when you had no written premium in 1994. Check Column B when you had 1994 written premiums of \$100,000 or less for "Medical Professional Liability," "Other Liability," and "Products Liability" combined (lines 11, 17, and 18 respectively of page 14 of the Annual Statement).

		<u>Column A</u> Zero Premium	<u>Column B</u> Less Than \$100,000
C0001	OWNERS, LANDLORDS, AND TENANTS INCLUDING STOREKEEPERS' LIABILITY	_____	_____
C0011	MANUFACTURERS AND CONTRACTORS LIABILITY	_____	_____
C0022	PREMISES/OPERATIONS LIABILITY	_____	_____
C0023	LIQUOR LIABILITY	_____	_____
C0024	PROFESSIONAL LIABILITY OTHER THAN MEDICAL OR LAWYERS	_____	_____
C0030	LAWYERS PROFESSIONAL LIABILITY	_____	_____
C0031	DIRECTORS AND OFFICERS LIABILITY	_____	_____
C0032	ENVIRONMENTAL IMPAIRMENT LIABILITY	_____	_____
C0033	PRODUCTS AND COMPLETED OPERATIONS LIABILITY	_____	_____
C0034	CONTRACTUAL LIABILITY	_____	_____
C0035	OWNERS AND CONTRACTORS PROTECTIVE LIABILITY	_____	_____
C0036	COMMERCIAL UMBRELLA LIABILITY	_____	_____
C0037	MEDICAL PROFESSIONAL LIABILITY	_____	_____
C0099	ALL OTHER COMMERCIAL LIABILITY NOT REPORTED IN ANY OF THE ABOVE MARKETS, INCLUDING COMPOSITE RISKS AND EXCESS INSURANCE NOT INCLUDED IN C0036	_____	_____

Signed: _____

Title: _____

Telephone: _____

Print Name: _____

Date: _____

EXHIBIT 3

Market Definitions

	Market Number and Name	Commercial Statistical Plan (CSP) Classes
C0001	OWNERS, LANDLORDS, AND TENANTS INCLUDING STOREKEEPERS' LIABILITY	All Subline 314 Classes and 326 Classes
C0011	MANUFACTURERS AND CONTRACTORS LIABILITY	All Subline 313 Classes
C0022	PREMISES/OPERATIONS LIABILITY	All Subline 334 Classes
C0023	LIQUOR LIABILITY	All Subline 312 and 332 Classes
C0024	PROFESSIONAL LIABILITY OTHER THAN MEDICAL AND LAWYERS	All Subline 317 Classes
C0030	LAWYERS PROFESSIONAL LIABILITY	81113, 81330, 81114, 81400, and 81420.
C0031	DIRECTORS AND OFFICERS LIABILITY	73140, 73144, 73145 (Subline 317)
C0032	ENVIRONMENTAL IMPAIRMENT LIABILITY	Subline 325 Class 90000, and Subline 350 Classes 90100, 90105, and 90110
C0033	PRODUCTS AND COMPLETED OPERATIONS LIABILITY	All Subline 316 and 336 Classes
C0034	CONTRACTUAL LIABILITY	All Subline 311 Classes and Vehicle Service Contracts
C0035	OWNERS AND CONTRACTORS PROTECTIVE LIABILITY	All Subline 315 and 335 Classes
C0036	COMMERCIAL UMBRELLA LIABILITY	99935 (Subline 325)
C0037	MEDICAL PROFESSIONAL LIABILITY	All Subline 210, 220, 230 240, 250, 260, 270 and 280 Classes
C0099	ALL OTHER COMMERCIAL LIABILITY NOT REPORTED IN ANY OF THE ABOVE MARKETS INCLUDING COMPOSITE RATED RISKS AND EXCESS INSURANCE NOT INCLUDED IN C0036	All Subline 325 Classes not reported above All Subline 322, 323, 324, 342, 343 and 344 Classes All Commercial General liability excess classes not including excess auto or excess WC

**ANNUAL REPORT OF VIRGINIA COMMERCIAL LIABILITY CLAIMS
AS REQUIRED BY SECTION 38.2-2228.1 OF THE CODE OF VIRGINIA**

Insurer: _____
 Address: _____

COMPANY NAIC # _____
 (and if Group Report GROUP NAIC#) _____

- Coverage Code**
 (Please check one only)
- 1. Claims Made
 - 2. Claims Made Tail Coverage
 - 3. Occurrence
 - 4. Claims Made - No retroactive date
 - 5. Claims Made Tail - No retroactive date

This report is due September 1, 1995. For each market described in the attached, provide the information requested for the Commonwealth of Virginia.

1. Market number and description (see Exhibit 3) _____

(\$000 omitted)

	1988	1989	1990	1991	1992	1993	6 months 1994
2. Calendar year earned premium.	_____	_____	_____	_____	_____	_____	_____
3. Total amount of attorney's fees paid in connection with the claim(s) to the extent these amounts are known (evaluated as of 3/31/94 on an accident year basis).	_____	_____	_____	_____	_____	_____	XXX
4. Total amount of paid and outstanding unallocated loss adjustment expense in connection with the claim(s) to the extent these amounts are known (evaluated as of 3/31/94 on an accident year basis).	_____	_____	_____	_____	_____	_____	XXX

5. Signed: _____
 Telephone: _____
 Date: _____

6. Title: _____
 Print Name: _____

VCR1(1/95)

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

7. Market _____
(from #1 on VCR1)

- Coverage Code
(Please check one only)
- 1. Claims Made
 - 2. Claims Made Tail Coverage
 - 3. Occurrence
 - 4. Claims Made - No retroactive date
 - 5. Claims Made Tail - No retroactive date

8. For accident years beginning with 1985, list the cumulative paid loss and allocated loss adjustment expense at the various points in time.

PAID LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-94:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

VCR2(1/95)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

Market _____
(from #1 on VCR1)

- Coverage Code**
(Please check one only)
- 1. Claims Made
 - 2. Claims Made Tail Coverage
 - 3. Occurrence
 - 4. Claims Made - No retroactive date
 - 5. Claims Made Tail - No retroactive date

9. For accident years beginning with 1985, list the case outstanding loss and allocated loss adjustment expense (excluding IBNR) at the various points in time.

CASE OUTSTANDING LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-94:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

VCR3(1/95)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

- Coverage Code
 (Please check one only)
 1. Claims Made
 2. Claims Made Tail Coverage
 3. Occurrence
 4. Claims Made - No retroactive date
 5. Claims Made Tail - No retroactive date

Insurer
 NAIC # or GROUP # _____

10. Market _____
 (from #1 on VCR1)

11. For accident years beginning with 1985, list the cumulative incurred loss and allocated loss adjustment expense (excluding IBNR) at the various points in time. (sum of 8 and 9).

INCURRED LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-94:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

VCR4(1/95)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

Market _____
(from #1 on VCR1)

- Coverage Code**
(Please check one only)
- 1. () Claims Made
 - 2. () Claims Made Tail Coverage
 - 3. () Occurrence
 - 4. () Claims Made - No retroactive date
 - 5. () Claims Made Tail - No retroactive date

12. For accident years beginning with 1985, list the cumulative number of incurred claims at the various points in time.

ACTUAL NUMBER OF INCURRED CLAIMS THROUGH 6-30-94:

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		
1994																		

VCR5(1/95)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

13. Market _____
(from #1 on VCR1)

14. For accident years beginning with 1985, list the IBNR for loss and allocated loss adjustment expense for each evaluation.

INCURRED BUT NOT REPORTED (IBNR) LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE EVALUATED THROUGH 12-30-93:

- Coverage Code
(Please check one only)
- 1. Claims Made
 - 2. Claims Made Tail Coverage
 - 3. Occurrence
 - 4. Claims Made - No retroactive date
 - 5. Claims Made Tail - No retroactive date

(\$000 Omitted)

Accident Year	12	24	36	48	60	72	84	96	108
1985									
1986									
1987									
1988									
1989									
1990									
1991									
1992									
1993									
1994									

VCR6(1/95)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VA.R. Doc. No. R95-445; Filed April 20, 1995; 10:30 a.m.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER SEVEN (95)

VIRGINIA'S FORTY-EIGHTH INSTANT GAME LOTTERY; "HIGH STAKES," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's forty-eighth instant game lottery, "High Stakes." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
April 4, 1995

VA.R. Doc. No. R95-425; Filed April 17, 1995, 9:03 a.m.

DIRECTOR'S ORDER NUMBER EIGHT (95)

CERTAIN DIRECTOR'S ORDERS RESCINDED

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

<u>Order Number</u>	<u>Date Issued</u>	<u>Subject</u>
05(92)	02/10/92	Virginia's Twenty-Third Instant Game Lottery; "Sunken Treasure," Final Rules for Game Operation.
27(92)	11/16/92	Virginia's Thirtieth Instant Game Lottery; "Instant Luck," Final Rules for Game Operation.
02(93)	01/13/93	Virginia's Thirty-First Instant Game Lottery; "Winning Pairs," Final Rules for Game Operation.
11(93)	04/05/93	Virginia's Thirty-Third Instant Game Lottery; "Barrels of Bucks," Final Rules for Game Operation.
18(93)	06/25/93	Virginia's Thirty-Fifth Instant Game Lottery; "Cash Explosion," Final Rules for Game Operation.
29(93)	09/20/93	Virginia's Thirty-Seventh Instant Game Lottery; "Movies, Music & Money," Final Rules for Game Operation.

01(94)	01/10/94	Virginia's Twenty-Third Instant Game Lottery; "Sunken Treasure," End of Game.
02(94)	01/10/94	Virginia's Thirtieth Instant Game Lottery; "Instant Luck," End of Game.
06(94)	01/28/94	Virginia's Thirty-Fifth Instant Game Lottery, "Cash Explosion"; End of Game.
12(94)	03/14/94	"Bingo Second Chance Promotion"; Final Rules for Game Operation.
13(94)	03/18/94	Virginia's Thirty-Third Instant Game Lottery, "Barrels of Bucks," End of Game.
15(94)	04/01/94	Southern Women's Show "Bingo" Promotion; Final Rules for Game Operation.
17(94)	04/05/94	"Winning Combinations," Virginia Lottery Retailer Promotional Program Rules.
24(94)	05/24/94	Virginia's Thirty-First Instant Game Lottery; "Winning Pairs," End of Game.
28(94)	07/08/94	Racing Promotions Raffle Drawing Rules.
30(94)	07/27/94	Virginia's "Lessons with a Legend" Second Chance Drawing; Final Rules for Game Operation.
32(94)	08/08/94	"Money Bags," Virginia Lottery Retailer Promotional Program Rules.
34(94)	09/01/94	Virginia's Thirty-Seventh Instant Game Lottery, "Movies, Music & Money," End of Game.
40(94)	10/31/94	The Virginia Lottery "Daytona 500 Second Chance"; Final Rules for Game Operation.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
April 5, 1995

VA.R. Doc. No. R95-426; Filed April 17, 1995, 9:03 a.m.

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

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 B to publish all final regulations.

Title of Regulation: VR 450-01-0004. Pertaining to the Licensing of Fixed Fishing Devices.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 7, 1995.

Preamble:

This regulation establishes the procedures associated with licensing fixed fishing devices. This regulation also establishes the procedures used to determine priority rights of fixed fishing device licensees.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0004 that was adopted on December 21, 1993, and was effective January 1, 1994. The effective date of this regulation is April 7, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0004. Pertaining to the Licensing of Fixed Fishing Devices.

§ 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 provisionally amends the previous regulation, VR 450-01-0004, Pertaining to the Licensing of Fixed Fishing Devices, which was promulgated by the Marine Resources Commission and made effective January 23, 1985. The provisional amendments to this regulation will exist as long as the moratorium on the American shad, specified by VR 450-01-0069, is in effect.~~

~~C. The effective date of this regulation is January 1, 1994.~~

§ 2. 1. Purpose.

The purpose of this regulation is to set forth the procedures pertaining to the licensing of fixed fishing devices and the priority rights of holders of fixed fishing device licenses.

§ 3. 2. Definitions.

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

"Fixed fishing device" means any fishing device used for the purpose of catching fish and requiring the use of more

than two poles or stakes which have been pushed or pumped into the bottom.

"Fyke net" means a round stationary net distended by a series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader or runner is held in place by stakes or poles which have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

"Officer" means the marine patrol officer in charge of the district within which the fixed fishing device is located.

"Pound net" means a stationary fishing device supported by stakes or poles which have been pushed or pumped into the bottom and consisting of an enclosure identified as the head or pocket with a netting floor, a heart, and a straight wall, leader or runner to help guide the fish into the net.

"Staked gill net" means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes which have been pushed or pumped into the bottom.

§ 4. 3. Location and measurements.

A. A fixed fishing device shall be perpendicular to the shoreline insofar as possible.

B. In determining compliance with the requirements prescribing minimum distances between fixed fishing devices, measurement shall be made from the center line of each device.

C. An applicant shall state the desired length of the fixed fishing device, which shall not exceed the maximum limit prescribed by law. Such length shall be stated on any license issued by the officer. A licensee may apply for a new license to include a greater length provided such additional length does not make the device exceed the maximum legal length or the legal requirement of a minimum distance between successive fishing structures in the same row. In the event a licensee fishes a length less than that stated on the license, the unfished length shall be subject to the provisions of § 6 5 B of this regulation.

§ 5. 4. Priority rights; general.

Except as may be otherwise provided herein, chronological order of receipt of applications shall be used to establish priority rights of any applicant to any fixed fishing device location. In those instances of simultaneous receipt, priority shall be determined by lottery.

§ 6. 5. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this regulation. Any location not relicensed during the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

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B. Except as provided in subsection C of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this regulation, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of VR 450-01-0069, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

§ 7. 6. Priority rights; licensed location, request by other than current licensee.

Applications for license for currently licensed fixed fishing device locations by persons other than the current licensee shall not be accepted by the officer during the year any current license is valid.

§ 8. 7. Priority rights; vacant location.

Application from any qualified applicant for any fixed fishing device at a vacant and unlicensed location may be accepted by the officer at any time during the year for which the license is intended, and only for the year during which the license is intended, except that any application received prior to noon on January 10 for any location believed to be vacant and unlicensed pursuant to § 6 5 B shall be considered as received at noon on January 10, and in chronological order of receipt.

§ 9. 8. Transfer and vested rights.

A. A current fixed fishing device license, and the rights to renew same, may be transferred by the present licensee provided all parties comply with the existing statutes and regulations. Any transferee takes the license subject to all of the duties of the transferor.

B. Any rights a licensee may have, upon his death, shall be vested in his personal representative or lawful beneficiary.

§ 9. *Penalty.*

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-427; Filed April 7, 1995, 3:22 p.m.

Title of Regulation: VR 450-01-0035. Pertaining to the Culling of Oysters.

Statutory Authority: §§ 28.2-201, 28.2-507, and 28.2-513 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes clean cull and seed areas, a minimum size limit, culling requirements, and inspection procedures for oysters taken from public oyster beds, rocks and shoals in the Chesapeake Bay and its tributaries and on all oyster grounds on the Seaside of Eastern Shore.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-507, and 28.2-513 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0035 that was adopted on September 27, 1994, and was effective on September 28, 1994. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Katherine V. Leonard, Oyster Replenishment Program, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-2120.

VR 450-01-0035. Pertaining to the Culling of Oysters.

§ 1. ~~Prior regulations.~~

~~This regulation rescinds orders 75-4, 82-8, VR 450-01-8801, VR 450-01-8807, and VR 450-01-8808.~~

§ 2. 1. Purpose.

The purpose of this regulation is to establish clean cull and seed areas, culling requirements (minimum size limit) and inspection procedures which will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

§ 3. 2. ~~Definitions~~ *Designation of seed areas and clean cull areas.*

A. Seed areas: All *The following* natural public oyster beds, rocks, or shoals are designated for the harvest of seed oysters, as follows:

1. Seaside of Eastern Shore. All of the public oyster grounds on the eastern side of Accomack and Northampton Counties on Virginia's Eastern Shore.
2. James River. All of the public oyster grounds in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th and 60th Streets in the City of Newport News, excluding the Jail Island and Point of Shoals Clean Cull area and the Deep Water Shoal State Repletion Seed Area.
3. Deep Water Shoal State Repletion Seed Area in the James River (574.66 acres) - beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, North 302,280.00, East 2,542,360.00; thence North Azimuth 30°49'59", 4,506.99 feet to Corner 2, North 306,150.00, East 2,544,670.00; thence North Azimuth 135°08'57", 5,430.60 feet to Corner 3, North 302,300.00, East 2,548,500.00; thence North Azimuth 212°13'54", 3,487.42 feet to Corner 4, North 299,350.00, East 2,546,640.00; thence North Azimuth 269°10'16", 2,765.29 feet to Corner 5, North 299,310.00, East 2,543,875.00; thence North Azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning. (Map 1)

B. Clean cull areas: All natural public oyster beds, rocks, or shoals in the tidal waters of Virginia, except those designated by the Marine Resources Commission as seed areas shall be considered clean cull areas.

Two areas within the James River Seed Area are set aside as clean cull areas and are described as follows:

1. Jail Island Clean Cull area (1,010 acres): Beginning at a point approximately 2,000 feet southwest of the shore of Mulberry Island at Point A as located by Virginia State Plane Coordinates, South Zone, NAD 1927 North 281,468.20, East 2,558,879.7; thence North Azimuth 131°26'56", 8,422.95 feet to Corner 1B, North 275,892.62, East 2,565,193.09, North Azimuth 210°28'11", 2,037.29 feet to Corner 20, North 274,136.69, East 2,564,160.02, thence North Azimuth 311°26'56", 8,949.8 feet to Point 22, North 280,061.03, East 2,557,451.72, continuing North Azimuth 311°26'22", 13,325.00 feet to Corner 3, North 288,879.88, East 2,547,462.55, thence North Azimuth 45°25'14", 2,004.82 feet to Corner 4, North 290,287.06, East 2,548,890.54, thence North Azimuth 131°26'22", 13,325.00 feet to Point A, being the point of beginning. (Map 2)
2. Point of Shoals Clean Cull Area (Baylor Acres - 820 acres): Beginning at Channel Light #7 and continuing along the south side of channel to Tylers Beach to Channel Light #1 at entrance to Tylers Beach Channel, thence North Azimuth 101°08'43", 8,417 feet to an

intersection corner near east end of Long Rock, Latitude 37°04'28.2", Longitude 76°7'37.5", thence North Azimuth 205°11'49", 9,604 feet to Day Marker #4, Latitude 37°03'03.1", Longitude 76°38'30", extending on same Azimuth line to other private ground. This area excludes any private leases within the outlined area. (Map 3)

§ 4. 3. Minimum cull size.

In order to encourage a continued supply of marketable oysters minimum size limits are hereby established. Undersized oysters and/or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidently retained during culling are found in § 5 4 of this regulation.

1. Oysters taken from clean cull areas shall not have shells less than three inches in length.
2. In the James River seed area there shall be no size limit and oysters shall not be marketed for direct consumption.
3. On the Seaside of Eastern Shore seed area, the shells of oysters marketed for direct consumption shall not be less than three inches in length. (Oysters marketed as seed oysters shall have no size limit.)

§ 5. 4. Culling tolerances or standards.

A. In the clean cull areas, if more than one four quart measure of undersized oysters or shells is found per bushel inspected it shall constitute a violation of this regulation.

B. In the James River seed areas, if more than one six quart measure of shells is found per bushel of seed oysters inspected it shall constitute a violation of this regulation.

C. On the Seaside of Eastern Shore seed areas, if more than one four quart measure of undersized (less than three inches) oysters and shell is found per bushel of oysters to be marketed for direct consumption, it shall constitute a violation of this regulation.

§ 6. 5. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile and subject to inspection by any Marine Resources Commission law-enforcement officer.

B. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this regulation.

C. It shall be unlawful for any harvester to store oysters taken from public grounds on any boat in any type of container. All oysters taken from said areas shall be sold or purchased only in the regular oyster one-half bushel or one

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bushel measure as described in § 28.2-526 of the Code of Virginia, except that on the Seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

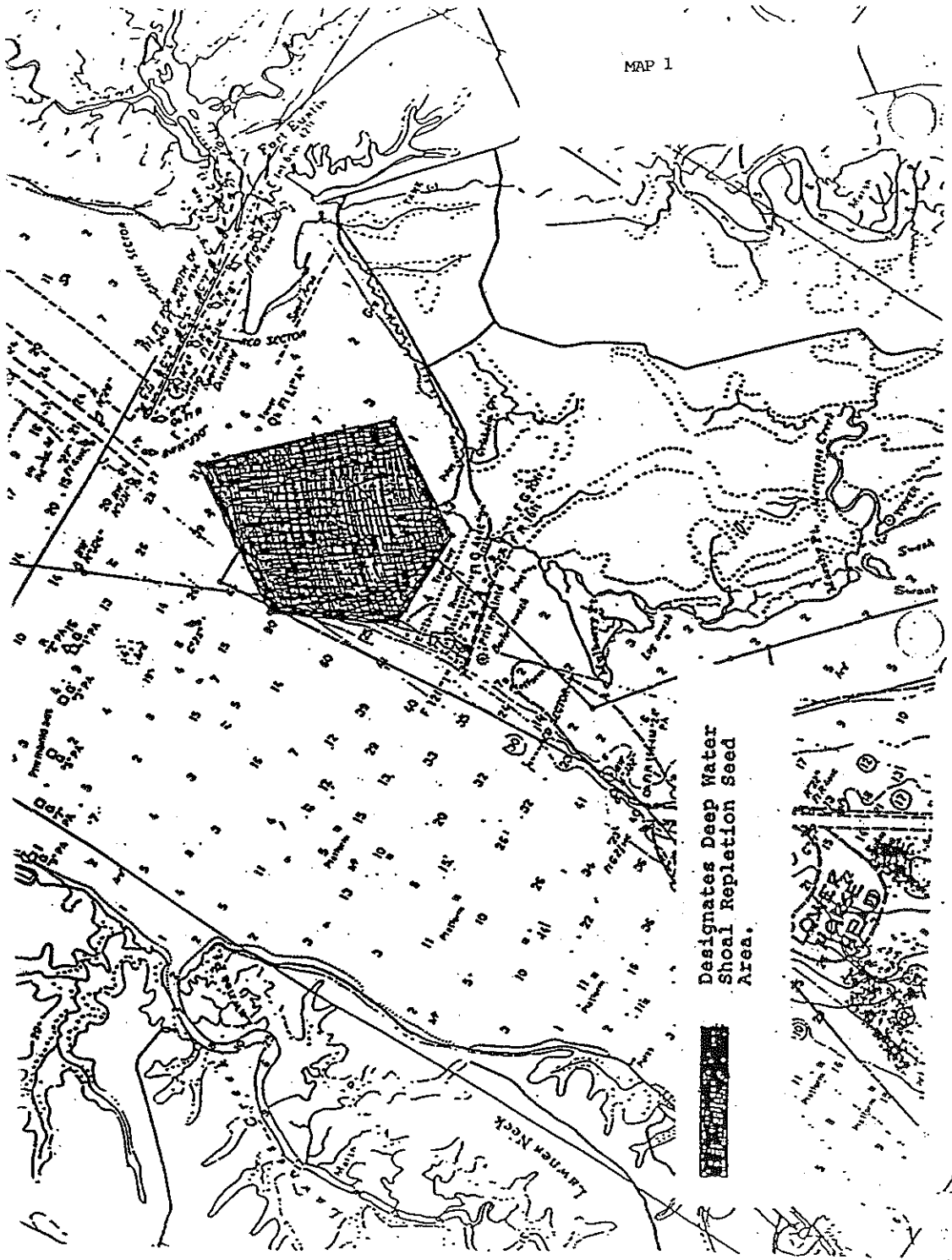
D. In the inspection of oysters the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters.

§ 7. 6. Penalty.

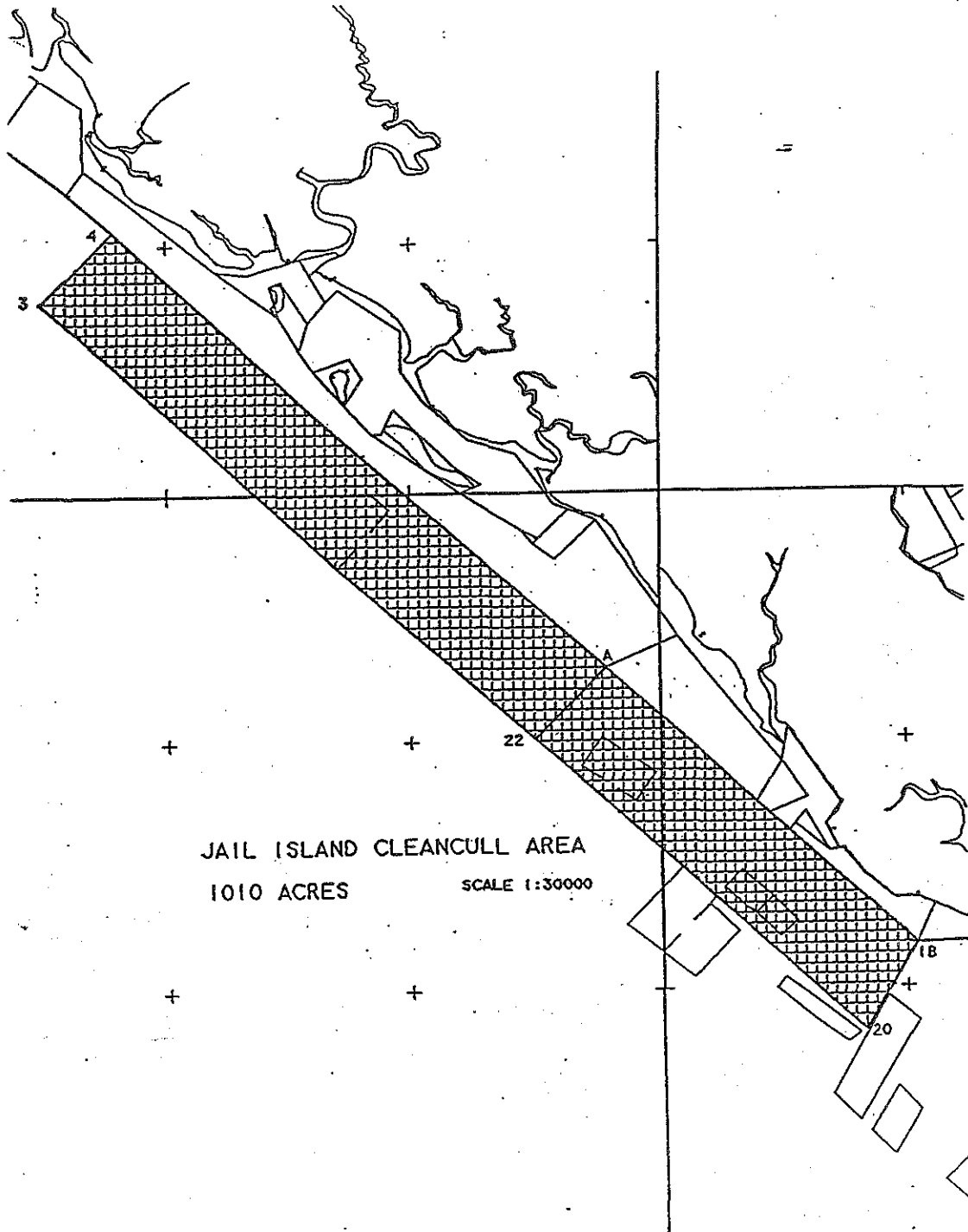
A. As set forth in §§ ~~28.2-204~~ 28.2-510 and 28.2-511 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation *except* § 5 C shall be guilty of a Class 3 misdemeanor.

B. *As set forth in § 28.2-526 of the Code of Virginia, any person violating any provision of § 5 C of this regulation shall be guilty of a Class 1 misdemeanor.*

/s/ William A. Pruitt
Commissioner

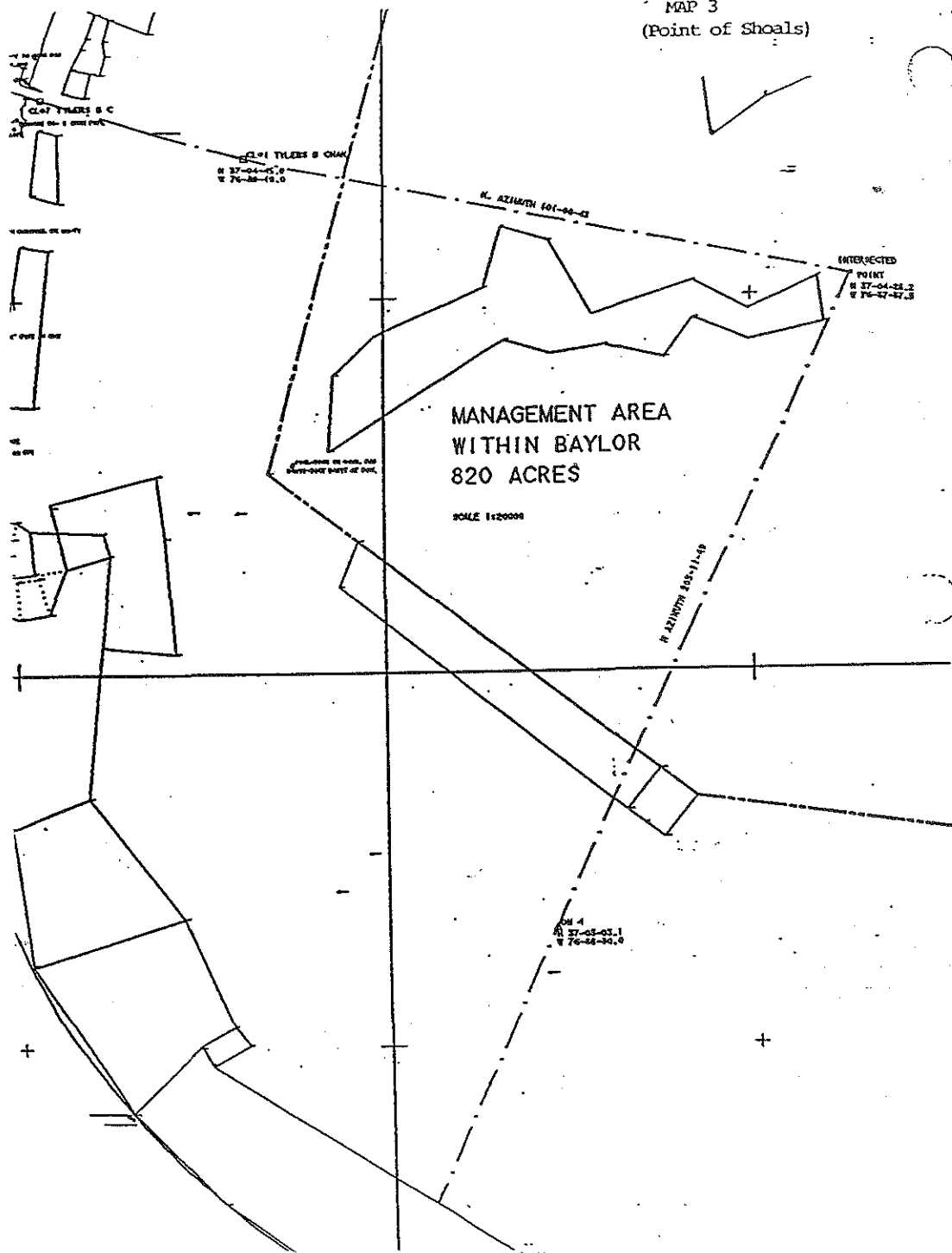


MAP 2



JAIL ISLAND CLEANCULL AREA
1010 ACRES

SCALE 1:30000



VA.R. Doc. No. R95-423; Filed April 14, 1995, 12:13 p.m.

Marine Resources Commission

Title of Regulation: VR 450-01-0037. Pertaining to Speckled Trout and Red Drum.

Statutory Authority: §§ 28.2-201 and 28.2-304 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes minimum size limits for the taking or possession of speckled trout and red drum (channel bass) by commercial and recreational fishermen. The minimum size limits will protect the spawning stocks and increase yield in the fishery. This regulation is designed to assure that Virginia is consistent with all federal and interstate management measures for speckled trout and red drum. The goal of these management measures is to perpetuate the speckled trout and red drum resources in fishable abundance throughout their range and generate the greatest utilization over time.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-304 of the Code of Virginia. This regulation amends previous VR 450-01-0037, which was adopted May 26, 1992, and effective July 1, 1992. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0037. Pertaining to Speckled Trout and Red Drum.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-304 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0037, "Pertaining to Speckled Trout and Red Drum," promulgated and made effective on March 1, 1992.~~

~~C. The possession limit of one red drum over 27 inches established by this regulation, supersedes the possession limit for red drum described in § 28.2-304 of the Code of Virginia.~~

~~D. The effective date of this regulation is July 1, 1992.~~

§ 2. 1. Purpose.

The purpose of this regulation is to protect and rebuild the spawning stocks of speckled trout and red drum, minimizing the possibility of recruitment failure, and to increase yield in their fisheries.

§ 2. Definitions.

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

"Red drum" means red drum or channel bass and is any fish of the species *Sciaenops ocellatus*.

"Speckled trout" means speckled trout or spotted seatrout and is any fish of the species *Cynoscion nebulosus*.

§ 3. Size limits.

A. It shall be unlawful for any person to take, catch, or possess any speckled trout less than 14 inches in length provided, however, the catch of speckled trout by pound net or haul seine may consist of up to 5.0%, by weight, of speckled trout less than 14 inches in length.

B. It shall be unlawful for any person to take, catch or possess any red drum less than 18 inches in length or more than one red drum greater than 27 inches in length.

C. Length is measured in a straight line from tip of nose to tip of tail.

§ 4. Bag Possession limits.

A. It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, or hand-line to take, catch, or possess more than 10 speckled trout per day.

B. It shall be unlawful for any person to take or catch possess more than five red drum per day, only one of which may exceed 27 inches in length.

C. It shall be unlawful for any person to possess more than one red drum in excess of 27 inches in length at any time.

§ 5. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.~~

A. Pursuant to § 28.2-304 of the Code of Virginia, any person violating any provision of § 4 C of this regulation shall be guilty of a Class 1 misdemeanor.

B. Pursuant to § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation other than § 4 C shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation, other than § 4 C, committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-428; Filed April 14, 1995, 1:01 p.m.

Title of Regulation: VR 450-01-0043. Pertaining to the Taking of Black Drum.

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes management measures for the black drum fishery designed to cap current harvests, minimize conflicts between user groups, provide accurate commercial fishery data, and protect black drum until they reach sexual maturity.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia. This regulation amends previous VR 450-01-0043, which was adopted October 26, 1993, and effective January 1, 1994. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0043. Pertaining to the Taking of Black Drum.

~~§ 1. Authority, prior regulation, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0043, "Pertaining to the Taking of Black Drum," which was promulgated on March 4, 1992.~~

~~C. The effective date of this regulation is January 1, 1994.~~

§ 1. Purpose.

The purpose of this regulation is to limit black drum harvest to levels of the last 10 years in order to prevent overfishing. A management area with time restrictions is also designated to reduce conflicts between recreational and commercial fishermen that concentrate on drum fishing grounds in the Lower Bay. The regulation also provides for the collection of management information for the black drum commercial fishery. Additionally, a minimum size limit is imposed to provide protection of black drum until they reach sexual maturity. Limited entry in the commercial fishery is implemented to prevent overcapitalization and to improve economic benefits to the recent full-time participants in the future.

§ 2. Definitions.

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

A. **Black Drum:** "Black drum" means any fish of the species *Pogonias cromis*.

B. **Commercial Harvest:** "Commercial harvest" means any black drum taken from the tidal waters of Virginia by any harvesting method, including hook-and-line, and sold.

~~§ 3. Purpose.~~

~~The purpose of this regulation is to limit black drum harvest to levels over the last 10 years in order to prevent overfishing. A management area with time restrictions is also designated~~

~~to reduce conflicts between recreational and commercial fishermen that concentrate on drum fishing grounds in the Lower Bay. The regulation also provides for the collection of management information for the black drum commercial fishery. Additionally, a minimum size limit is imposed to provide protection of black drum until they reach sexual maturity. Limited entry in the commercial fishery is implemented to prevent overcapitalization and to improve economic benefits to the recent full-time participants in the future.~~

§ 4. 3. Commercial harvest quota.

During any calendar year, the total allowable sum of commercial harvest of black drum from Virginia tidal waters shall be 120,000 pounds of whole fish. At such time as the total harvest of black drum reaches 120,000 pounds, it shall be unlawful for any person to take, catch, or land any black drum by any method for commercial purposes.

§ 5. 4. Daily bag Possession limits on hook and line harvests.

A. It shall be unlawful for any person using hook and line, rod and reel, or hand line to take or catch from Virginia tidal waters more than one black drum per day. Any black drum taken after the bag possession limit of one has been reached shall be returned to the water immediately.

B. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the daily bag possession limit shall be for the boat or vessel and shall be equal to the number of persons on board the vessel legally eligible to fish. Retention of the legal number of black drum is the responsibility of the vessel operator or owner captain. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

§ 6. 5. Special management area/time restrictions.

It shall be unlawful for any person to place, set, or fish gill nets or trotlines from 7 a.m. to 8:30 p.m. of each day for the period of May 1 to June 7, dates inclusive, in the southeastern portion of the Chesapeake Bay in the area bounded by a line drawn from the Cape Charles Jetty to the 36A Buoy to the RN-28 Buoy, then south along the Baltimore Channel to the Fourth Island of the Chesapeake Bay Bridge Tunnel, then north along Chesapeake Bay Bridge Tunnel to Fisherman's Island then north along the coast, returning to the Cape Charles Jetty.

§ 7. 6. Minimum size limit.

A. It shall be unlawful for any person to take, catch, or possess any black drum less than 16 inches in total length.

B. Total length shall be measured in a straight line from the tip of the nose to the tip of the tail.

§ 8. 7. Commercial harvest permits required.

A. It shall be unlawful for any registered commercial fisherman to take, catch, sell, or possess black drum without first having obtained a Black Drum Harvesting and Selling Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in the possession of the permittee while fishing and selling

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black drum. Permits shall only be issued to applicants meeting the following criteria:

1. The applicant shall be a registered commercial fisherman and shall have held a Black Drum Permit in at least one year from 1988 to 1993;
2. The applicant shall have documented catch of black drum in at least one year for which a Black Drum Permit was held from 1988 to 1993; and
3. The applicant shall have reported, in accordance with this regulation, any black drum fishery activity in 1992 and 1993, if a Black Drum Permit was held in those years.

Nothing in this subsection is intended to prohibit a registered commercial fisherman fishing pursuant to § 4 of this regulation as a legally eligible recreational fisherman from possessing only one black drum not to be sold.

B. The *Marine Resources Commission* may grant exceptions to the limited entry criteria listed in subsection A of this section based upon scientific, economic, biological, sociological, and hardship factors. Any person requesting an exception shall provide in writing an explanation for exception and all pertinent information relating to the criteria in subsection A of this section. All exception requests must be received by the *Marine Resources Commission* prior to March 1 of the year for which a permit is requested.

C. It shall be unlawful for any person, firm, or corporation to buy any black drum from the harvester without first having obtained a Black Drum Buying Permit from the *Marine Resources Commission*. Such permit shall be completed in full by the permittee and a copy kept in possession of the permittee while buying black drum.

D. Any person, firm or corporation that has black drum in possession with the intent to sell must either be a permitted harvester or buyer, or must be able to demonstrate that those fish were imported from another state or purchased from a permitted buyer or seller.

§ 9- 8. Mandatory reporting of commercial harvest.

A. Commercial harvesters and buyers of black drum shall report daily harvest information on forms to be provided by the *Marine Resources Commission*. Such information shall include, but is not limited to, the number of fish, their weight, location of harvest, method of capture and the buyer's and seller's permit identification number. Such reports shall be completed in full and shall be submitted to the *Marine Resources Commission* on a weekly basis.

B. Buyers of black drum imported from out of state shall also report the amount of black drum imported on the forms provided by the *Marine Resources Commission*.

C. *Marine Resources Commission* personnel or designate may also collect biological information from black drum accumulated at the place of business of commercial buyers. Such sampling shall be done with the cooperation of the buyers and in a manner which will not inhibit normal business operations.

§ 40- 9. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor. In addition, those in violation shall forfeit their Black Drum Harvesting or Buying Permit and its privileges.

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-429; Filed April 14, 1995, 12:05 p.m.

Title of Regulation: VR 450-01-0055. Pertaining to the Use of Trawls in the Territorial Sea.

Statutory Authority: §§ 28.2-201 and 28.2-315 of the Code of Virginia.

Effective Date: April 13, 1995.

Preamble:

This regulation establishes a prohibition on the use of trawls in Virginia's portion of the Territorial Sea. The use of trawls or similar devices is prohibited in all the waters under Virginia's jurisdiction by § 28.2-314 of the Code of Virginia; however, § 28.2-315 of the Code of Virginia grants the Marine Resources Commission authority to permit trawling and control the area, manner, method, size and season of catch during certain times in certain areas of Virginia's portion of the Territorial Sea. The Marine Resources Commission has elected not to exercise this authority at this time, and by this regulation affirms its intent to keep Virginia's portion of the Territorial Sea closed to trawling.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-315 of the Code of Virginia. This regulation amends previous VR 450-01-0055, which was adopted March 7, 1989, and was effective July 1, 1989. The effective date of this regulation is April 13, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, *Marine Resources Commission*, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0055. Pertaining to the Use of Trawls in the Territorial Sea.

§ 1. Authority, repeal of prior regulation, effective date.

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-315 of the Code of Virginia.~~

~~B. VMRC Order 83-6, effective October 1, 1983, establishes a 4 1/2 inch mesh size for trawl nets used in Virginia's tidal waters and is hereby repealed.~~

~~C. The effective date of this regulation is July 1, 1989.~~

§ 2. 1. Purpose.

The purpose of this regulation is to provide for the conservation of Virginia's summer flounder stocks and stocks of other species utilizing the Territorial Sea as a migratory pathway to spawning grounds and nursery areas.

§ 3. 2. Prohibition.

~~It shall be unlawful for any person, firm, or corporation to operate any trawl net or to take or catch fish, crabs or shellfish by use of trawl net within the Territorial Sea area between the baseline from which the Territorial Sea is measured and three nautical miles seaward to the Three Nautical Mile Line. Territorial Sea shall consist of that area within the three mile limit of the Virginia Atlantic shoreline.~~

§ 4. 3. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.~~

As set forth in § 28.2-314 of the Code of Virginia, use of a trawl or similar device in the waters of the Commonwealth of Virginia, unless specifically permitted by the Marine Resources Commission as provided in § 28.2-315 of the Code of Virginia, shall be a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-430; Filed April 13, 1995, 2:59 p.m.

Title of Regulation: VR 450-01-0059. Pertaining to the Taking of Bluefish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes a possession limit of bluefish for recreational fishermen and commercial hook-and-line fishermen and a commercial harvest annual quota.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends previous VR 450-01-0059, which was adopted August 23, 1994, and was effective September 1, 1994. The effective date of this regulation is April 14, 1995.

Agency Contact Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0059. Pertaining to the Taking of Bluefish.

~~§ 1. Authority, effective date, prior regulation.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0059 which was promulgated and made effective December 1, 1990.~~

~~C. The effective date of this regulation is September 1, 1994.~~

§ 2. 1. Purpose.

Stock assessment information indicates that bluefish stocks along the Atlantic Coast are fully exploited and show signs of declining abundance. ~~Both the 1993 coastwide commercial and recreational landings were below the average for 1979-1993 landings. One purpose of this regulation is to control the hook-and-line recreational harvest of bluefish (which constitutes approximately 77% of the fishing coastwide), in cooperation with MAFMG the Mid-Atlantic Fishery Management Council and other coastal states, to prevent overfishing. A second purpose is to establish a commercial quota system for Virginia bluefish landings. The ASMFC and MAFMC approved a coastwide quota system to control commercial landings in 1994 because when the coastwide commercial fishery is projected to equal or exceed the 20% of total (recreational and commercial) landings limit established for this fishery.~~

§ 3. 2. Bluefish bag possession 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 possess more than 10 bluefish. Any bluefish taken after the bag possession limit of 10 fish has been reached shall be returned to the water immediately.

B. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession bag limit shall be for the boat or vessel and shall be equal to the number of persons on board the boat or vessel legally eligible to fish multiplied by 10. Possession of the legal number of bluefish is the responsibility of the vessel captain or operator. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

§ 4. 3. Commercial landings quota.

A. During the period of January 1, 1994 1995, through December 31, 1994 1995, commercial landings of bluefish shall be limited to 4,247,660 913,788 pounds.

~~B. It shall be unlawful for any person to harvest for commercial purposes or to land bluefish for sale, after the commercial landings quota as described in subsection A of this section has been attained. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close commercial harvest and landings from the bluefish fishery within five days of posting.~~

~~C. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close commercial harvest and landings from the bluefish fishery within five days of posting. It shall be unlawful for any person to harvest or land bluefish for commercial purposes after the closure date set forth in the notice described in subsection B of this section.~~

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§ 5. 4. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of the regulation shall be guilty of a Class 3 misdemeanor.~~

~~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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-431; Filed April 14, 1995, 1:23 p.m.

Title of Regulation: VR 450-01-0069. **Pertaining to the Taking of American Shad.**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 7, 1995.

Preamble:

This regulation establishes a total moratorium on the harvest of American Shad from the Chesapeake Bay and its tributaries. The effective date of this regulation is April 7, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, P.O. Box 756, Newport News, VA 23606, telephone (804) 247-2248.

VR 450-01-0069. Pertaining to American Shad.

~~§ 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 previous VR 450-01-0069 promulgated and made effective on January 1, 1992.~~

~~C. The effective date of this regulation is January 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to reduce fishing mortality in order to rebuild the Virginia stocks of American Shad. The shortened fishing season in 1993 is established to minimize the immediate impact of a complete moratorium which will be effective on January 1, 1994.

§ 3. 2. Mouth of Chesapeake Bay defined *Definitions.*

For the purposes of this regulation, the mouth of the Chesapeake Bay is defined as the Colregs Demarcation Line, as appearing on NOAA Chart No. 12221, which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

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

"Chesapeake Bay" means the areas west of the Colregs Demarcation Line, which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

§ 4. 3. Fishing-season Moratorium.

~~A. The lawful fishing season for the commercial and recreational harvest of American Shad from the Chesapeake Bay and its tidal tributaries shall be March 15, 1993, through April 15, 1993, both dates inclusive. On or after January 1, 1994, it shall be unlawful for any person to catch and retain possession of American Shad from the Chesapeake Bay or its tidal tributaries.~~

~~B. It shall be unlawful for any person to catch and retain possession of any American Shad from the Chesapeake Bay or its tributaries outside of the lawful fishing season. On and after January 1, 1994, it shall be unlawful for any person to possess any American Shad taken from the Chesapeake Bay or its tidal tributaries.~~

§ 5. 4. Entry limitations Penalty.

~~A. It shall be unlawful for any person to harvest American Shad with commercial fishing gear from the Chesapeake Bay or its tidal tributaries without first having obtained a permit from the Marine Resources Commission. Permits shall be issued to persons meeting the following conditions:~~

~~1. The applicant shall be licensed as a registered commercial fisherman and shall apply for a "Commercial Shad Harvest Permit" by completing the form provided by the commission.~~

~~2. The applicant shall have fished commercially for American Shad during the 1991 or 1992 legal fishing season and shall submit proof of such activity to the commission with the completed application form.~~

~~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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

~~§ 6. Gear restrictions.~~

~~A. It shall be unlawful for any person utilizing a vessel or boat to harvest fish by gill net to have on board, possess, or land American Shad in a vessel equipped with more than 3,000 yards of gill net.~~

~~B. It shall be unlawful for any person to use or to place overboard for the harvest of American Shad more than 3,000 yards of gill net per boat.~~

§ 7. Moratorium.

~~A. On and after January 1, 1994, it shall be unlawful for any person to catch and retain possession of American Shad from the Chesapeake Bay or its tidal tributaries.~~

~~B. On and after January 1, 1994, it shall be unlawful for any person to possess any American Shad taken from the Chesapeake Bay or its tidal tributaries.~~

~~§ 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.~~

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-432; Filed April 7, 1995, 3:26 p.m.

Title of Regulation: VR 450-01-0070. Pertaining to Spanish and King Mackerel.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes possession limits, minimum size limits, and trip limits on the harvest of Spanish mackerel and king mackerel. These regulations are established to prevent overfishing and to assist the further recovery of Spanish mackerel and king mackerel along the Atlantic Coast.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends previous VR 450-01-0070, which was adopted May 28, 1991, and effective June 8, 1991. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0070. Pertaining to Spanish and King Mackerel.

~~§ 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. No prior regulations pertain to Spanish mackerel or king mackerel.~~

~~C. The effective date of this regulation is June 8, 1991.~~

§ 2. 1. Purpose.

The purpose of this regulation is to prevent overfishing of the Spanish mackerel and king mackerel stocks found in Virginia waters and along the Atlantic Coast. This regulation responds to supports the goals and objectives of the Atlantic States Marine Fisheries Commission's and the South Atlantic Fishery Management Council's Spanish and king mackerel fishery management plans, federal and interstate management measures for Spanish and king mackerel.

§ 2. Definitions.

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

"Trip" means that period during which the vessel shall have left a dockside landing place, relocated to waters where fishing for Spanish mackerel by the vessel is legally permitted, and returned to a dockside landing place.

§ 3. Daily bag Possession limits established.

~~A. The daily bag limits for hook and line fishermen taking Spanish mackerel or king mackerel are established at 10 Spanish mackerel per day and 5 king mackerel per day. When fishing from a vessel, the daily limits shall be equal to the number of persons on board the vessel multiplied by 10 for Spanish mackerel or multiplied by 5 for king mackerel. Possession of the legal number of Spanish or king mackerel is the responsibility of the vessel captain or operator.~~

~~B. It shall be unlawful for any person to take by hook and line, hand-line, or rod and reel and possess more than 10 Spanish mackerel per day or more than 5 king mackerel per day.~~

~~A. It shall be unlawful for any person fishing with hook-and-line, hand-line, rod-and-reel, spear or gig or other recreational gear to possess more than 10 Spanish mackerel or more than five king mackerel.~~

~~B. When fishing from a boat or vessel, where the entire catch is held in a common hold or container, the possession limits shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 10 for Spanish mackerel or multiplied by five for king mackerel. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.~~

~~C. The daily bag possession limit provisions established in this section shall not apply to persons harvesting Spanish mackerel or king mackerel with licensed commercial gear.~~

§ 4. Minimum size limits established.

~~A. Minimum size limits for Spanish mackerel and king mackerel are established at 14 inches total length.~~

~~B. Except as provided in subsection E below, It shall be unlawful for any person to take, catch or possess any Spanish mackerel less than 14 inches in total length.~~

~~C. Except as provided in subsection E below of this section it shall be unlawful for any person to take, catch or possess any king mackerel less than 14 inches in total length.~~

~~D. Total length shall be measured in a straight line from the tip of nose to the tip of the tail for the purposes of this regulation.~~

~~E. Nothing in this section shall prohibit the taking of, catching, or possession of any Spanish mackerel or king mackerel, less than 14 inches total length, by a licensed pound net, nor the possession of any Spanish mackerel or king mackerel taken by licensed pound net and measuring less than 14 inches total length.~~

~~§ 5. Commercial and recreational quotas established; provisions for close of fishery established.~~

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~~A. This regulation incorporates, by reference, the commercial and recreational catch quotas established under the provisions of the South Atlantic Fishery Management Council Coastal Migratory Pelagic Fishery Management Plan, as described in 50 CFR Part 642, and as in effect on the date of the adoption of this regulation.~~

~~B. It shall be unlawful to take or catch from the tidal waters of Virginia with commercial gear any Spanish mackerel or king mackerel at such time as that species' commercial catch quota, as established under subsection A of this section, is reached.~~

~~C. It shall be unlawful to take or catch from the tidal waters of Virginia with hook and line, red and reel, or hand line any Spanish mackerel or king mackerel at such time as that species' recreational catch quota, as established under subsection A of this section, is reached.~~

§ 5. Trip limit established.

~~It shall be unlawful for any person to land in Virginia any amount of Spanish mackerel in excess of 3,500 pounds per vessel per trip.~~

§ 6. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.~~

~~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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-433; Filed April 14, 1995, 12:48 p.m.

Title of Regulation: VR 450-01-0077. Pertaining to the Taking of Hard Clams.

Statutory Authority: §§ 28.2-201 and 28.2-810 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes the procedure for obtaining authorization to patent tong hard clams in nonrestricted (clean) areas by clambers who possess special permits to harvest clams in restricted (polluted) areas. It restricts permitted clambers to work only polluted bottom, or notify Marine Resources Commission law enforcement and work only clean bottom. This regulation further establishes a maximum size limit for clams in restricted areas.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-810 of the Code of

Virginia. This regulation amends previous VR 450-01-0077, which was adopted November 23, 1993, and effective January 1, 1994. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0077. Pertaining to the Taking of Hard Clams.

§ 1. Authority, prior regulation, effective date.

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-810 of the Code of Virginia.~~

~~B. Section 28.2-810 of the Code of Virginia specifies that it shall be unlawful for any person to take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until the Commissioner of Marine Resources or his designee has issued a special permit. The permittee shall carry the permit when engaged in such operation.~~

~~C. The effective date of this regulation is January 1, 1994.~~

~~D. This regulation replaces VR 450-01-0077 which was promulgated and made effective June 15, 1992.~~

§ 2. 1. Purpose.

The purpose of this regulation is to prohibit clambers who possess permits to harvest relay clams from working in clean waters, without first obtaining authorization from VMRC Marine Resources Commission law enforcement. The possibility of mixing relay clams with clean clams will therefore be eliminated. In addition, a maximum size limit is established for the conservation of brood stock.

§ 2. Definitions.

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

"Chowder clam" means any hard clam that cannot pass through a 2-7/8 inch inside diameter culling ring.

"Operations Office" means Marine Resources Commission Law Enforcement Operations Office.

§ 3. Special permit restrictions.

A. During the relay season, it shall be unlawful for any person possessing a permit for relay clam harvest as required by § 28.1-810 of the Code of Virginia, to harvest clams from clean waters without first obtaining authorization from the VMRC Law Enforcement Operations Office.

B. Any clammer who has been issued a permit for relay clams, shall notify VMRC the Operations Office before their his boat leaves the dock, either by marine radio (channel 17) or by telephone (1-800-541-4646 or 247-2265/2266, (804) 247-2265 or (804) 247-2266), of their his intent to patent tong clams in a nonrestricted area on that day. Each permitted clammer shall provide the Operations Office with their name, relay permit number, boat name, present location (for

possible verification), departure time, destination and buyer to whom the clams will be sold.

C. Each permitted clammer shall also notify ~~VMRC the~~ Operations Office at the time ~~their~~ his boat returns to the dock ~~as well as and furnish their~~ his catch count.

§ 4. ~~Chowder clam defined.~~ Allowance for chowder clams, return of containers of clams in violation.

A. ~~"Chowder clam" means any hard clam that cannot pass through a 2 7/8 inch diameter culling ring.~~

B. A. It shall be unlawful to possess any amount of hard clams taken from restricted areas which consists of more than 10% chowder clams by number. The 10% allowance shall be measured by the Marine Patrol Officer from each container or pile of clams.

~~G. B.~~ All clams in any container or pile found in violation of this regulation shall be returned to the water by the clammer as directed by the Marine Patrol Officer.

§ 5. 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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-434; Filed April 14, 1995, 12:58 p.m.

Title of Regulation: VR 450-01-0079. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

Statutory Authority: §§ 28.2-201, 28.2-204, 28.2-241, 28.2-242 and 28.2-243 of the Code of Virginia.

Effective Date: April 25, 1995.

Preamble:

This regulation describes the procedures and manner for application for registration as a commercial fisherman, the manner and form of mandatory harvest reports by commercial fishermen and others, and exceptions to the registration process and delay requirements as specified in § 28.2-241 of the Code of Virginia. A commercial hook-and-line license is also established.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-204, 28.2-241, 28.2-242, and 28.2-243 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0079 that was adopted on June 27, 1994, and was effective July 1, 1994. The effective date of this regulation is April 25, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine

Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0079. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

§ 1. Authority, prior regulation, effective date.

A. ~~This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia.~~

B. ~~This regulation replaces previous regulation VR 450-01-0079 which was promulgated and made effective January 1, 1994.~~

C. ~~The effective date of this regulation is July 1, 1994.~~

§ 2. 1. Purpose.

The purpose of this regulation is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. Further, the purpose is to license commercial fishermen using hook-and-line, rod-and-reel, or hand line.

§ 2. Definitions.

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

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of the Marine Resources Commission.

"Sale" means sale, trade, or barter.

"Sell" means sell, trade, or barter.

"Selling" means selling, trading or bartering.

"Sold" means sold, traded, or bartered.

§ 3. Commercial fisherman registration license; exceptions.

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their catch, or give their catch to another, in order that it may be sold, traded, or bartered (~~hereinafter generally referred to as "sell," "selling," "sale," or "sold" as the context requires~~). Only these licensees may sell their catches from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling catch are authorized for the following persons only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.
2. Persons taking diminutive quantities of minnows, used solely for bait for fishing.
3. One agent, who is not registered as a commercial fisherman, may be authorized to possess the registration license of a commercial fisherman in order to serve as a substitute in his absence for fishing the license holder's

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gear and selling the catch. No more than one person shall be used as an agent at any time. An agent must possess the registration license of the owner when fishing or selling the catch in his behalf.

B. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only, and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

C. Exceptions to the two-year delay may be granted by the commissioner, if he finds any of the following:

1. (i) The applicant for an exception has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) the applicant can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

4. Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.

5. Under no circumstances will an exception be granted solely on the basis of economic hardship.

§ 4. Registration procedures.

A. Applicants holding a valid Commercial Fisherman Registration License may register during the period

December 1 through February 28 of each year as commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License.

2. The applicant shall mail the completed application and \$150, or \$75 if 70 years old or older during the license year, to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in § 4 A may apply only during December, January or February of each year. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address, social security number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

2. The applicant shall mail the completed application and \$150, or \$75 if 70 years old or older during the license year, to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. No part of the Commercial Fisherman Registration License fee shall be refundable.

D. The Commercial Fisherman Registration License may be renewed annually during the months of December, January or February. Any person failing to renew his license shall be subject to the delay provision of § 4 B.

§ 5. Commercial hook-and-line license.

A. On or after January 1, 1993, it shall be unlawful for any person desiring to take or catch fish in the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand line and selling to sell such catch shall without first purchase having purchased a Commercial Hook-and-Line License from the commission or its agent.

B. The fee for the Commercial Hook-and-Line License shall be \$25.

C. A Commercial Fisherman Registration License, as described in § 28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.

§ 6. Mandatory harvest reporting.

A. It shall be unlawful for any person holding a Commercial Fisherman Registration License to fail to fully

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report their catches and related information as set forth in this regulation.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia to fail to report recreational catches upon request to those authorized by the commission.

C. Registered commercial fishermen shall accurately and legibly complete a daily form describing that day's harvest from Virginia tidal waters. The forms used to record daily harvest shall be those provided by the commission or another approved by the commission. Registered commercial fishermen may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen shall submit a monthly catch report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily catch records described in subsection C of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E. The monthly catch report and daily catch records shall include the name and signature of the registered commercial fisherman and his license registration number, buyer or private sale information, date of sale, city or county of landing, water body fished, gear type and amount used, number of hours fished, species harvested, market category, and live weight or processed weight or species harvested. Any information on the price paid for the catch may be voluntarily provided.

F. Registered commercial fishermen not fishing during a calendar year shall so notify the commission no later than February 1 of the following year.

G. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily catch record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen shall maintain their daily catch records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen and licensed seafood buyers shall allow those authorized by the commission to sample catch and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner which does not hinder normal business operations.

J. The reporting of oyster harvest and transactions shall be made in accordance with VR 450-01-0026 and shall be exempted from the procedures described in this section.

§ 7. Penalty.

A. 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, and a second or subsequent

violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalties described by law, any person violating any provision of this regulation may be subject to license suspension or revocation.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-458; Filed April 25, 1995, 4:13 p.m.

Title of Regulation: VR 450-01-0081. Pertaining to Summer Flounder.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 25, 1995.

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 possession and season limit.

This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia and amends VR 450-01-0081, which was promulgated by the Marine Resources Commission and made effective March 3, 1995. The effective date of this regulation is April 25, 1995.

Agency Contact: Deborah R. McCalester, Regulatory Coordinator, Marine Resources Commission, P. O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0081. Pertaining to Summer Flounder.

§ 1. 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.

§ 2. Definitions.

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

"Trip" means that period during which a vessel shall have left a dockside landing place, relocated to waters where trawling is legally permitted, and returned to a dockside landing place.

§ 3. Commercial harvest quotas.

A. 1. During each calendar year, commercial landings of Summer Flounder shall be limited to the total pounds calculated pursuant to the joint Mid-Atlantic Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as

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approved by the National Marine Fisheries Service on August 6, 1992; and shall be distributed as described in subdivisions 2 through 8 of this subsection:

2. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds.

3. During the period of January 1 through March 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 64.3% of the total specified in subdivision 1 of this subsection after deducting the amount specified in subdivision 2 of this subsection.

4. During the period of April 1 through June 30 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 6.4% of the total specified in subdivision 1 of this subsection after deducting the amount specified in subdivision 2 of this subsection.

5. During the period of July 1 through September 30 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 6.4% of the total specified in subdivision 1 of this subsection after deducting the amount specified in subdivision 2 of this subsection.

6. During the period of October 1 through December 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 22.9% of the total specified in subdivision 1 of this subsection after deducting the amount specified in subdivision 2 of this subsection and as may be further modified by subdivision 7 of this subsection.

7. a. During the periods set forth in subdivisions 3, 4, and 5 of this subsection, should landings exceed or fall short of the quota specified for that period any such excess shall be deducted from, and any such shortage shall be added to, the quota for the period set forth in subdivision 6 of this subsection.

b. During the period specified in subdivision 2 of this subsection, should landings be projected to fall short of the quota specified for that period, any such shortage shall be added to the quota for the period set forth in subdivision 6 of this subsection. A projection of harvest under this subdivision b will be made on or about November 1.

8. For each of the time periods and quotas set forth in subdivisions 3, 4, 5, 6 and 7 of this subsection, the Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments thereto.

B. It shall be unlawful for any person to harvest for commercial purposes or to land Summer Flounder for sale after any commercial harvest or landing quotas as described in this section has been attained and announced as such.

§ 4. Commercial trip limitation.

A. During the period of January 1 through March 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to land in Virginia any amount of Summer Flounder in excess of 2,500 pounds per vessel per trip after it is projected and announced that 85% of the quarterly quota has been taken.

B. During the period of April 1 through September 30 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to land in Virginia any amount of Summer Flounder in excess of 2,500 pounds per vessel trip.

C. During the period October 1 through December 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to land in Virginia any amount of Summer Flounder in excess of 12,000 pounds per vessel per trip, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to land in Virginia any amount of Summer Flounder in excess of 2,500 pounds per vessel per trip.

D. For each of the time periods and trip limits set forth in subsections A and C of this section, the Marine Resources Commission will give timely notice of any changes in trip limits.

§ 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. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to catch and retain possession of any Summer Flounder smaller than the designated minimum size limit.

§ 6. Possession limit.

It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, spear, gig or other recreational gear, or with commercial hook-and-line, to possess more than eight Summer Flounder. When fishing is from a boat, or vessel where the entire catch is held in a common hold or container, the possession limit of Summer Flounder shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by eight. The boat captain or operator is of the boat or vessel shall be responsible for the retention of the legal number of Summer Flounder any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

§ 7. Recreational fishing season.

The recreational fishing season shall be from May 1 through October 31 for each calendar year. Prior to May 1 and after October 31 in any calendar year, it shall be unlawful for any person fishing pursuant to a recreational fishing

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~~license and using any of the gear permitted by that license to harvest or possess Summer Flounder year-round and there is no closed season.~~

§ 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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-459; Filed April 25, 1995, 4:08 p.m.

Title of Regulation: VR 450-01-0085. Establishment of Oyster Management Areas.

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes as Oyster Management Areas that area in the James River from Wreck Shoals to the James River Bridge and that area in the Piankatank River known as Palace's Bar Oyster Reef. Further it establishes as Oyster Management Areas those shell and seed oyster planting locations made during 1993 and in subsequent years by the Oyster Replishment Program.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-507 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0085 that was adopted on February 23, 1993, and was effective on March 1, 1993. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Katherine V. Leonard, Oyster Replenishment Program, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-2120.

VR 450-01-0085. Establishment of Oyster Management Areas.

§ 1. Authority and effective date.

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-507 of the Code of Virginia.~~

~~B. The effective date of this regulation is March 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to protect and promote the oyster resources within the designated areas of the James and Piankatank Rivers and to protect oyster replenishment efforts on all public oyster grounds.

§ 3. 2. Oyster replenishment management areas defined.

A. The following Oyster Management Areas are established:

A. 1. The Wreck Shoals - James River Bridge Oyster Management Area shall consist of all public oyster grounds located from Wreck Shoals downriver to the James River Bridge in the James River. The upriver boundary for the Oyster Management Area shall be from Jail Point southwest to the southernmost corner of the Jail Island clean cull area then westerly to Channel Buoy 16 then southeasterly to the Channel Buoy 12, then southerly to Mogarts Beach. The downriver boundary shall be the James River Bridge.

B. 2. The Palace's Bar Oyster Reef - Piankatank River Oyster Management Area shall consist of all public oyster grounds in Public Ground No. 5, Mathews County bounded by the following corners:

- 1) a. Northwest corner - 37° 31' 42.33536" N
76° 22' 25.60567" W
- 2) b. Southeast corner - 37° 31' 39.43913" N
76° 22' 26.40939" W
- 3) c. Southwest corner - 37° 31' 42.74142" N
76° 22' 40.71772" W
- 4) d. Northwest corner - 37° 31' 45.63757" N
76° 22' 39.91328" W

C. B. All areas planted with oyster shell and seed by the commission's Oyster Replenishment Program in 1993 and in subsequent years shall be considered Oyster Management Areas.

§ 4. 3. Closure of management areas.

Until further notice, all Oyster Management Areas are closed to the harvest of oysters except on the Seaside of the Eastern Shore where Oyster Management Areas are closed to the harvest of all shellfish. Any person harvesting oysters or shellfish from the specified areas shall be guilty of a violation of this regulation.

§ 5. 4. 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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-424; Filed April 14, 1995, 12:13 p.m.

Title of Regulation: VR 450-01-0090. Pertaining to Recreational Gear Licenses.

Statutory Authority: §§ 28.2-201, 28.2-226.1 and 28.2-226.2 of the Code of Virginia.

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Effective Date: April 14, 1995.

Preamble:

This regulation establishes licenses for the recreational and personal use of certain fishing and crabbing gear. It limits the amount of gear and the catch, and establishes gear identification requirements and harvest reporting requirements for the licensees.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-226.1, and 28.2-226.2 of the Code of Virginia. This regulation amends previous VR 450-01-0090, which was adopted May 25, 1993, and effective June 1, 1993. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0090. Pertaining to Recreational Gear Licenses.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-226.1 and 28.2-226.2 of the Code of Virginia.~~

~~B. This regulation replaces emergency regulation VR 450-01-0090 which was promulgated and made effective on April 12, 1993.~~

~~C. The effective date of this regulation is June 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to establish licenses for the recreational and personal use of certain fishing and crabbing gear. Limits are established on the amount of gear which may be used and the amount of catch which may be taken. Gear identification requirements and harvest reporting requirements are established to reduce the possibilities of gear conflicts and to assess the levels of harvest made by recreational users of commercial gear.

§ 3. 2. Recreational gear licenses.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of Virginia using commercial gear authorized under § 28.2-226.1 of the Code of Virginia shall first pay the specified fee and obtain the license for the appropriate gear, as follows:

1. Recreational gill net	\$ 7.50
2. Recreational fish cast net	\$ 8.00
3. Recreational fish dip net	\$ 6.00
4. Recreational crab pot	\$29.00
5. Recreational crab trap	\$ 5.00
6. Recreational ordinary crab trot line	\$ 8.00

B. Any license to use fishing gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

C. No person shall be issued more than one recreational gill net license, more than one recreational crab pot license, nor more than one crab trap license.

D. No license shall be required of any person taking minnows, menhaden, or mullet with a cast net for personal use as bait which is not to be sold, traded, or bartered.

§ 4. 3. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this regulation. Any person licensed to use a recreational gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this regulation.

B. It shall be unlawful for any person to use more than five crab pots when licensed for recreational purposes under this regulation.

C. Any law or regulation applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots, crab traps, or crab trot lines shall also apply to these gear when set or fished for recreational purposes.

D. It shall be unlawful for any person to use any recreational gill net, fish cast net, or fish dip net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

E. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational bag possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this regulation, the total daily bag possession limit shall be equal to the number of licensed persons on board the boat legally eligible to fish multiplied by the individual daily bag possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish which is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this regulation.

G. It shall be unlawful for any person licensed to use five crab pots under this regulation to fish these crab pots on Sunday.

H. It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this regulation.

§ 5. 4. Gear marking requirements.

In addition to the requirements for marking commercial gill nets, crab pots and crab traps, each licensee shall mark the end flags, poles or buoys of their gear with the letter "R."

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§ 6. 5. Reporting requirements.

Any person using recreational gear described in § 3 2 of this regulation shall report annually, on forms provided by the commission, the weight and species harvested, location of harvest, days fished, and amount of gear used.

§ 7. 6. 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 *and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.*

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-436; Filed April 14, 1995, 12:51 p.m.

Title of Regulation: VR 450-01-0091. Pertaining to Gill Nets.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation establishes an area along the southern shore of the Chesapeake Bay and Atlantic Ocean between the Hampton Roads Bridge-Tunnel and Dam Neck which is closed to gill nets.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends previous VR 450-01-0091 which was adopted May 25, 1993, and effective June 1, 1993, and rescinds previous VR 450-01-0092, which was adopted June 22, 1993, and effective June 1, 1993, and reenacts its provisions in this regulation. The effective date of this regulation is April 14, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0091. Pertaining to Gill Nets.

§ 1. Authority, effective date.

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is June 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to ~~close a portion of the southern shoreline of the Chesapeake Bay and Atlantic Ocean to gill nets~~ in order to preserve public safety and reduce conflicts between gill net fishermen and others in this area.

§ 2. Rescission.

VR 450-01-0092 is rescinded, and its provisions are reenacted in § 3 of this regulation.

§ 3. Gill net closed season and area.

From May 15 through September 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net within 400 feet of the shoreline in the area bounded by the ~~western jetty at the mouth of Little Creek Hampton Roads Bridge-Tunnel~~ eastward to Cape Henry and south to the southern oceanfront boundary of the United States Dam Neck Military Base.

§ 4. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating the provisions of this regulation shall be guilty of a Class 3 misdemeanor *and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.*

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-437; Filed April 14, 1995, 2:20 p.m.

Title of Regulation: VR 450-01-0093. Pertaining to Crab Pots.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 25, 1995.

Preamble:

This regulation establishes a requirement for the use of cull rings in crab pots, and is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. This regulation amends previous VR 450-01-0093, that was adopted and made effective March 2, 1995. The effective date of this regulation is April 25, 1995.

Agency Contact: Deborah R. McCalester, Regulatory Coordinator, Marine Resources Commission, P. O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0093. Pertaining to Crab Pots.

§ 1. Purpose.

The purpose of this regulation is to conserve the blue crab resource by promoting the escape of small crabs from crab pots through the use of cull rings.

§ 2. Cull ring requirements.

A. It shall be unlawful for any person to place, set or fish any crab pot in Virginia's tidal waters which does not contain at least two unobstructed cull rings of size and location within the pot as hereinafter described, except as provided in subsection B of this section. One cull ring shall be at least 2-5/16 inches inside diameter, and the other cull ring shall be at least 2-3/16 inches inside diameter. These cull rings shall be

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located one each in opposite exterior side panels of the upper chamber of the pot.

B. The required 2-5/16 inches inside diameter cull ring may be obstructed in crab pots set within the crab dredge areas as set forth in VR 450-01-0012, or within Pocomoke or Tangier Sounds or on the seaside of Accomack and Northampton Counties.

C. Peeler pots with a mesh size less than 1-1/2 inches shall be exempt from the cull ring requirement.

§ 3. Penalty.

Pursuant to § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-460; Filed April 25, 1995, 5:20 p.m.

Title of Regulation: VR 450-01-0096. Pertaining to Nonresident Harvesters License Fee.

Statutory Authority: § 28.2-227 of the Code of Virginia.

Effective Date: April 13, 1995.

Preamble:

This regulation establishes a nonresident harvesters license fee for any nonresident desiring to take or catch fish, crabs, or any other seafood, except oysters, clams or other mollusks, from the tidal waters of the Commonwealth, for which a license is required.

This regulation is promulgated pursuant to authority contained in § 28.2-227 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0096 that was adopted on October 26, 1993, and was effective on January 1, 1994. The effective date of this regulation is April 13, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0096. Pertaining to Nonresident Harvesters License Fees.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-227 of the Code of Virginia.~~

~~B. The effective date of this regulation is January 1, 1994.~~

§ 2. 1. Purpose.

The purpose of this regulation is to establish the fee for the nonresident harvesters license.

§ 3. 2. Fee established.

The fee for the nonresident harvesters license shall be \$350.

§ 4. 3. Exceptions.

The nonresident harvesters license shall not be required for persons licensed to fish with saltwater recreational licenses required under §§ 28.2-302.1 through and 28.2-302.9 of the Code of Virginia.

§ 5. 4. Penalty.

Penalties for violations of ~~this regulation~~ *the nonresident license requirement* are prescribed in §§ 28.2-225 and 28.2-227 E of the Code of Virginia.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-438; Filed April 13, 1995, 2:55 p.m.

Title of Regulation: VR 450-01-0097. Pertaining to the Snagging of Fish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 13, 1995.

Preamble:

This regulation prohibits the snagging of fish. This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0097 that was adopted on October 26, 1993, and was effective on November 1, 1993. The effective date of this regulation is April 13, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0097. Pertaining to the Snagging of Fish.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is November 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to reduce snagging injuries and mortalities to finfish in Virginia waters, and to preserve the public safety by prohibiting the practice of snagging.

§ 3. 2. Snagging prohibited.

It shall be unlawful for any person to take or to attempt to take any finfish by means of snagging.

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§ 4. 3. 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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-439; Filed April 13, 1995, 2:57 p.m.

Title of Regulation: VR 450-01-0098. Pertaining to Crab Dredge License Sales.

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: April 13, 1995.

Preamble:

This regulation limits the sale of crab dredge licenses for the 1994/95 crab dredge season to those persons who held licenses and were actively engaged in the dredge fishery as of March 31, 1994. This regulation further limits the sale of crab dredge licenses for the 1995/96 crab dredge season and each season thereafter to those persons who held a crab dredge license and were actively engaged in the crab dredge fishery during the previous crab dredge season. No crab dredge license will be issued to any new applicant after March 31, 1994, and no crab dredge license will be issued to any new applicant until the number of crab dredge licenses drops below 225 and that thereafter the number of crab dredge licenses allowed in the fishery will be set at 225.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0098 that was adopted November 23, 1993, and was effective on December 1, 1993. The effective date of this regulation is April 13, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0098. Pertaining to Crab Dredge License Sales.

§ 1. Authority, prior regulation, effective date.

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.~~

~~B. Other restrictions on crab dredging can be found in Chapter 7 of Title 28.2 of the Code of Virginia and in VR 450-01-0007, VR 450-01-0012, VR 450-01-0036, VR 450-01-0041 and VR 450-01-0049.~~

~~C. The effective date of this regulation is December 1, 1993.~~

§ 2. 1. Purpose.

The purpose of this regulation is to limit the number of crab dredge licenses issued for the 1994/95 season and each season thereafter, ~~to the number of crab dredge licenses issued for the 1993/94 season.~~ In addition, the number of crab dredge licenses will be reduced each season thereafter, progressively through attrition, until the number of dredge licenses is set and maintained at 225. This regulation is part of recent restrictions adopted by the Marine Resources Commission in response to recommendations concerning control of fishing effort contained in the Chesapeake Bay Blue Crab Management Plan of the Chesapeake Bay Program.

§ 3. 2. Crab dredge permit required.

A. It shall be unlawful for any person to take or catch crabs using a crab dredge without first having obtained a crab dredge permit from the Marine Resources Commission or its agent, as of December 1, 1994. Permits will only be issued to commercial fishermen meeting the following conditions:

1. Applicants shall hold a valid commercial registration license.
2. Applicants shall have held a crab dredge license during the previous season and shall have been actively engaged in the previous season's crab dredge fishery.
3. Applicants shall have fully reported their catches in accordance with VR 450-01-0079.
4. Completed permit applications may be hand delivered or mailed to the Marine Resources Commission, 2600 Washington Avenue, P.O. Box 756, Newport News, Virginia 23607.

§ 4. 3. Limit on sale of licenses.

A. Except as provided in § 5 4 of this regulation, the total number of crab dredge licenses issued for the 1994/95 season and each season thereafter shall be limited to the number of crab dredge licenses issued for the 1993/94 season (December 1, 1993 - March 31, 1994).

B. Except as provided in § 5 4 of this regulation, any person who held a 1993 or 1994 crab dredge license and who did not harvest crabs during the 1993/94 crab dredge season shall not be eligible to participate in the 1994/95 crab dredge season or any season thereafter.

C. Except as provided in § 5 4 of this regulation, no crab dredge licenses will be issued to any new applicant after March 31, 1994, and no crab dredge licenses will be issued to any new applicant until the number of crab dredge licenses drops to 220 or below as of December 10 of any year.

§ 5. 4. Exceptions to limit transfers of crab dredge licenses.

A. The commission may grant exceptions to the limitation of the issuance of crab dredge licenses based on scientific, economic, biological, sociological and hardship factors.

B. A crab dredge licensee may transfer his license to a member of his immediate family, provided that the family

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member holds a current commercial registration license. A member of the immediate family shall mean a father, mother, daughter, son, brother, sister or spouse. A crab dredge licensee also may transfer his license to the buyer of his boat and crab dredge gear provided that the buyer holds a current commercial registration license. Any transfer of a crab dredge license shall be in writing and shall be validated by a marine patrol officer.

§-6. 5. 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, and a second or subsequent violation of any provision of this regulation committed by the same within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-440; Filed April 13, 1995, 3:02 p.m.

Title of Regulation: VR 450-01-0099. Pertaining to the Setting and Mesh Size of Gill Nets.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 14, 1995.

Preamble:

This regulation prohibits the setting of any gill net with a stretch-mesh size between 3 3/4 inches and 8 inches within western Chesapeake Bay tributaries of Virginia from January 1 through April 15 of each year.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends previous VR 450-01-0099, which was adopted June 18, 1994, and was effective January 1, 1995. The effective date of this regulation is April 14, 1995.

Agency Contact: Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0099. Pertaining to the Setting and Mesh Size of Gill Nets.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is January 1, 1995.~~

§ 2. 1. Purpose.

The purpose of this regulation is to reduce the out-of-season by-catch of American shad and striped bass, thereby reducing injuries and mortalities to these two species.

§ 3. 2. Gill net mesh sizes prohibited, restricted areas, and season.

From January 1 through April 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3-3/4 inches and 8 inches within the restricted areas defined in § 4 of this regulation set forth below.

~~§ 4. Restricted areas.~~

~~For purposes of this regulation, restricted areas are defined as follows:~~

- ~~1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;~~
- ~~2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;~~
- ~~3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;~~
- ~~4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;~~
- ~~5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;~~
- ~~6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;~~
- ~~7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and~~
- ~~8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.~~

§ 5. 3. 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, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ Robert D. Craft
Chief
Administration and Finance Division

VA.R. Doc. No. R95-441; Filed April 14, 1995, 12:46 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER TWELVE (94) (Revised)

CONTINUING THE GOVERNOR'S COMMISSION ON BASE RETENTION AND DEFENSE ADJUSTMENT

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Commission on Base Retention and Defense Adjustment.

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.1-51.35 and 9-6.25 of the Code of Virginia.

The Commission shall have the responsibility to advise the Governor, and others whom the Governor directs, on all matters related to Virginia's response to the activities of the United State Defense Base Closure and Realignment Commission ("BRAC"), on matters regarding re-use of military bases which may be closed, and on community adjustment and other issues related to defense downsizing.

Background

With changing world political and economic conditions, including the end of the Cold War and the collapse of the Soviet Union, the United States has begun a major restructuring of its military forces and defense expenditures. The number of commands in all branches of the military is being cut; troops, facilities and equipment are being realigned; and the budget for military expenditures is being significantly reduced. The initial round of "base closings" began in 1988 and has continued with three more reviews in 1991, 1993, and in 1995. The possibility of future rounds of base closings is also under discussion. This process will permanently alter the economic condition and structure of communities which have been host to United States military facilities and personnel.

Virginia traditionally ranks either first or second among all states in terms of per capita defense spending by the United States Government. Hampton Roads is the location of the largest military complex and concentration of military facilities, equipment, and personnel anywhere in the United States. In addition, other regions of Virginia are host to major military concentrations which contribute greatly to their local economies. Finally, many businesses in Virginia receive contracts for U.S. Department of Defense-related goods and services.

The impact of defense cuts is being felt on Virginia's economy. Although the actual dollar amount of defense-related activity has increased slightly in recent years, the number of people employed by defense contractors and at military facilities has dropped significantly. As a result of the recommendations of the 1993 BRAC Commission, the net job loss to Virginia was 10,200 jobs. The recommendations of the 1995 BRAC Commission would also have an adverse impact on the Commonwealth's economy if they are adopted.

In past years, Virginia's response to the BRAC process has lacked organization and coordination. It is clear that Virginia

now must fight aggressively to retain military bases and jobs created by defense spending. In order to do so, elected officials, local communities, business organizations and individual citizens must work together to demonstrate the value of the United States' investment in Virginia installations and Virginia's desire to be a supportive host for defense-related activities in this state. As a result of this Commission, the state has been able to lead a coordinated effort to protect Virginia bases from closure or realignment during the past year.

Duties of the Commission

The Governor's Commission on Base Retention and Defense Adjustment is continued to provide policy advice in coordinating Virginia's response to the BRAC '95 process and other issues associated with defense adjustment. The Commission's specific duties shall include:

1. To advise local communities of the BRAC '95 timetable, process and requirements;
2. To support the members of Virginia's Congressional Delegation in presenting factual information concerning the strategic and economic importance of defense installations in various regions of the state;
3. To create alliances of communities and interested organizations for the purpose of formulating effective plans for addressing BRAC-related issues;
4. To coordinate and facilitate activities designed to prevent closure of United States defense-related installations in Virginia;
5. To identify sources of funding and other resources to assist in the process of defense adjustment; and
6. To assist in devising long-term strategies for re-use of facilities that have been closed or that are in the process of closing, and for diversification of the state's economy to lessen dependency on defense-related spending.

Organization and Support

The Commission shall be composed of no more than thirty (30) members appointed by the Governor and serving at his pleasure. The Governor shall designate a Chair and Vice-Chair, or in lieu thereof, two or more Co-Chairs, to lead the Commission.

Such staff and financial support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished through an Office of Base Retention and Defense Adjustment within the Commerce and Trade Secretariat. This office shall receive support as necessary from the Office of the Governor, the Offices of the Governor's Secretaries, the Department of Planning and Budget, the Department of Economic Development, and such other Executive agencies with closely and definitely related purposes as the Governor may designate. Staff time necessary to support the Office and Commission is estimated at 6,000 hours. Funding necessary for the term of the Commission's existence shall be provided from sources, including state and federal appropriations and private contributions, authorized by Section 2.1-51.37(2) of the Code of Virginia. The cost of the Commission's work, including the

Governor

support activities of the Office of Base Retention and Defense Adjustment, is estimated at \$250,000.

Members of the Commission shall serve without compensation and may receive reimbursement for expenses incurred in the discharge of their official duties only upon the approval of the Secretary of Commerce and Trade.

The Commission shall issue such interim and final reports, and shall make such recommendations, as it may deem appropriate or as the Governor may direct.

This Executive Order replaces Executive Order Number 12 (94) signed by me on June 17, 1994, and shall remain in full force and effect until March 31, 1996, unless sooner amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia, this 1st day of April, 1995.

/s/ George Allen
Governor

VA.R. Doc. No. R95-447; Filed April 18, 1995, 11:24 a.m.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF AVIATION

By virtue of this notice, the Department of Aviation (DOAV) is soliciting public comments on any aspect of the Virginia Aviation Regulations (VR 165-01-02:1). DOAV requests that the public respond should they feel (1) that any part of the regulations is particularly burdensome, (2) that any part of the regulations needs strengthening, (3) that any part of the regulations is unneeded as it pertains to the public's health, safety, and welfare, (4) that any part of the regulations could be carried out in a more economical and efficient manner, and (5) that any part of the regulations is not written so that it is easily understood.

DOAV intends to begin in the near future the amendment process to conform the Virginia Aviation Regulations to legislative changes enacted by the General Assembly regarding airport licensing.

DOAV requests that those interested in commenting on the Virginia Aviation Regulations do so in writing. These comments should be sent to Keith F. McCrea, Policy Analyst, Virginia Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150.

The deadline for submission of written comments is 5 p.m., June 15, 1995. Requests for copies of the Virginia Aviation Regulations may be made by contacting the Department of Aviation at 800-292-1034.

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

In compliance with Executive Order Number Fifteen (94), the following proposed schedule details specific events that provide for a review of the Department of Minority Business Enterprise's (DMBE) regulations. The plan for subsequent periodic reviews of agency regulations following this review is also included. This plan has been approved by the Secretary of Commerce and Trade.

Currently, DMBE has Public Participation Guidelines (VR 486-01-01) and Regulations to Govern the Certification of Minority Business Enterprise (VR 486-01-02) on record with the Virginia Registrar of Regulations. The following schedule for the review and assessment of existing regulations is submitted for your approval.

Agency Regulatory Review Schedule

May 15, 1995 Publication in the Virginia Register of Regulations; notification that DMBE intends to review the following:

- VR 486-01-01. Public Participation Guidelines.

- § 1. General information - definitions.

- § 2. Initiation of process.

- § 3. Public participation.

- § 4. Advisory panel.

- § 5. Final action/adoption.

- VR 486-01-02. Regulations to Govern the Certification of Minority Business Enterprise.

- § 1. General information - definitions.

- § 2. General requirements.

- § 3. Approval and denial of certification.

- § 4. Appeals.

- § 5. Decertification.

- § 6. Recertification.

- § 7. Miscellaneous.

May 9, 1995

DMBE encourages maximum public involvement in the formulation of its regulations. In accordance with agency Public Participation Guidelines (VR 486-01-01), a notice that the above cited regulations are being reviewed is being mailed directly to the following persons to ensure to the fullest extent possible public participation in this review:

- The DMBE database of minority businesses, contracting officers, individuals, related industry organizations, etc.; currently at approximately 3,200.

- The U.S. Small Business Administration, Richmond and Northern Virginia District offices.

- The Minority Business Development Center Network - statewide (affiliated with MBDA - USDOC).

- Various minority business professional organizations statewide.

The notice will request that comments be submitted to the Director of the Department of Minority Business Enterprise by June 9, 1995. The notice will specifically request that comments include but not be limited to the following:

Schedules for Comprehensive Review of Regulations

- Identification of the specific regulation being commented on.
- A comment as to whether the regulation is clearly written and easily understandable. If possible, stipulate why it is not clear or understandable and any recommendations for improving its clarity.
- Whether the regulation should be retained in its current form, amended or terminated and why.
- A statement as to whether or not the regulation is the least burdensome and intrusive method available to achieve its purpose, or if there is an alternative method.
- Provide for a minimum of a 30-day comment period and hold a public meeting, if applicable.
- Submit regulatory review package to the Office of the Secretary and the Department of Planning and Budget.
- Submit proposed regulation (if applicable) for publication in the Virginia Register of Regulations following approval by the Secretary.
- Allow a 60-day public comment period and hold a public hearing, if applicable.
- Revise regulation as needed.
- File adopted regulation with the Virginia Registrar, Department of Planning and Budget, Office of the Secretary and the Office of the Governor.

May 16, 1995 Request that the office of the Attorney General review the regulations being evaluated to ensure that statutory authority exists for each. Additionally, the Attorney General will be asked to assist in the determination of whether and to what extent each regulation is mandated by state or federal law.

June 9, 1995 Agency deadline for receipt of public comments. Agency acknowledges receipt of public comment from all individuals as received.

June 16, 1995 First draft of the review of agency regulations report is completed by DMBE staff.

June 30, 1995 Agency submits final report of regulatory review to the Secretary of Commerce and Trade.

Subsequent to review by the Office of the Secretary, Department of Planning and Budget, and the Office of the Governor, DMBE shall promptly respond to recommended changes.

The Department of Minority Business Enterprise does not have plans to develop and promulgate new regulations following the current review process. DMBE will adhere to the following review plan for subsequent reviews in accordance with Executive Order Number Fifteen (94), to be conducted every three years.

Public comments regarding these regulations should be sent to Kent Smith, Special Assistant to the Director, Department of Minority Business Enterprise, 200-202 North Ninth Street, 11th Floor, Richmond, Virginia 23219. Copies of the regulation may also be obtained by contacting Mr. Smith at (804) 786-5560.

Plan for Periodic Review of Agency Regulations

- DMBE requests authorization from the Office of the Secretary to submit its Notice of Intended Regulatory Action (NOIRA) to the Virginia Registrar of Regulations for publication.
- Submission of NOIRA for publication in the Virginia Register of Regulations.

- Allow for a 30-day final adoption period.
- Final regulation in effect.
- Review regulation as outlined in DMBE review plan and schedule.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the regulations of the Board for Waste Management Facility Operators. As a part of this process public input and comments are being solicited; comments may be provided until July 28, 1995, to the administrator of the program, David E. Dick, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are written clearly so that they may be used and implemented by all those who interact with the regulatory process.

Regulations:

VR 674-01-02. Board for Waste Management Facility Operators Regulations.

VR 674-01-01. Board for Waste Management Facility Operators Public Participation Guidelines.

A public hearing on the regulations will be held on July 27, 1995, 11 a.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until July 28, 1995, to David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8595.

GENERAL NOTICES/ERRATA

Symbol Key †

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

GENERAL NOTICES

SECRETARY OF THE COMMONWEALTH

† Notice to Counties, Cities, Towns, Authorities, Commissions, Districts and Political Subdivisions of the Commonwealth

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year.

The following form may be photocopied for use herein described.

Contact: Sheila Evans, Conflict of Interest and Appointments Specialist, P.O. Box 2454, Richmond, VA 23201-2454, Old Finance Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

Filing Form per §2.1-71 of the *Code of Virginia-1995*
Office of the Secretary of the Commonwealth

OFFICIAL TITLE OF POLITICAL SUBDIVISION: _____
ADDRESS: _____

<u>Type of Obligation</u>	<u>Date Issued</u>	<u>Amount of Issue</u>	<u>Balance Outstanding</u>	<u>Type of Project Financed</u>
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DEPARTMENT OF HEALTH

† Maternal and Child Health Block Grant Application Fiscal Year 1996

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1995, the Maternal and Child Health Services Block Grant Application for the period October 1, 1995, through September 30, 1996, 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 one
- 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 assurances 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 26 through June 25, 1995, for review and public comment on the Block Grant Application. Copies of the document will be available as of May 26, 1994, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Janice M. Hicks at the address listed below. Written comments must be received by June 25, 1995, at the following address:

Virginia Department of Health
Office of Family Health Services
1500 East Main Street, Room 104-B
Richmond, VA 23219-2448
(804) 371-0478
FAX (804) 692-0184

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Regional Consortium Initiative for Homeownership and Private Sector Partnerships in Affordable Housing

EXTENSION OF DEADLINE

Pursuant to the Notice of Funding Availability issued on February 26, 1995, by the Department of Housing and

Community Development entitled "Regional Consortia Initiative for Homeownership and Private Sector Partnerships in Affordable Housing," the application deadline for submission of proposals has been extended to May 31, 1995. A Question and Answer document put forth by the department in response to questions asked during "How-to-Apply" workshops held throughout the state is available upon request.

Contact: Vivian L. Carnegie, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7123 or FAX (804) 371-7091.

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: (804) 692-0625.

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 OBJECTIONS -
RR08

ERRATA

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: VR 425-02-37. Grain Handling Facilities Standard, General Industry (1910.272).

Publication Date: 11:11 VA.R. 1807-1808 February 20, 1995.

Correction to Final Regulation:

Page 1808, paragraph 2, line 2 should read:
"...contained in §§ 1910.252(d) and ~~1910.146.8.D~~
have..."

Title of Regulation: VR 425-02-50:1. Welding, Cutting and
Brazing Standard, General Industry (1910.251 - 1910.255).

Publication Date: 11:11 VA.R. 1810-1811 February 20, 1995.

Correction to Final Regulation:

Page 1810, column 2, paragraph 2, line 3, change
"1910.252" to "1910.255"

Title of Regulation: VR 425-02-52. Logging Operations,
General Industry (1910.266).

Publication Date: 11:15 VA.R. 2413-2414 April 17, 1995.

Correction to Final Regulation:

Page 2413, column 2, next to last line, change "February
9, 1994" to "February 9, 1995"

Title of Regulation: VR 425-02-97. Electric Power
Generation, Transmission and Distribution, General
Industry (1910.269).

Publication Date: 11:15 VA.R. 2415-2416 April 17, 1995.

Correction to Final Regulation:

Page 2415, column 2, next to last line, change "February
9, 1994" to "February 9, 1995"

Title of Regulation: VR 425-02-99. Agriculture Industry
Standard for Applicable Standards in 29 CFR 1910
(1928.21).

Publication Date: 11:15 VA.R. 2419-2420 April 17, 1995.

Correction to Final Regulation:

Page 2419, next to last line, change "February 9, 1994"
to "February 9, 1995"

CALENDAR OF EVENTS

Symbol 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

June 16, 1995 -- Public 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 Accountancy intends to amend regulations entitled: **VR 105-01-2. Board for Accountancy Regulations**. The purpose of the proposed amendments is to reduce current educational requirements and eliminate the provision for specific coursework requirements.

Statutory Authority: §§ 54.1-201 and 54.1-2002 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

May 16, 1995 - 11 a.m. -- CANCELLED

Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ♿

The board meeting has been cancelled.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., #906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

June 6, 1995 - 10 a.m. -- Open Meeting

July 11, 1995 - 10 a.m. -- Open Meeting

Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ♿

The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., #906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

STATE AIR POLLUTION CONTROL BOARD

State Advisory Board on Air Pollution

† **June 2, 1995 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, Board Room, 6900 Cox Road, Richmond, Virginia.

A regular meeting of the board.

Contact: Kathy Frahm, Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4376 or FAX (804) 762-4346.

ALCOHOLIC BEVERAGE CONTROL BOARD

May 31, 1995 - 9:30 a.m. -- Open Meeting

June 12, 1995 - 9:30 a.m. -- Open Meeting

June 26, 1995 - 9:30 a.m. -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

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

† June 30, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514. 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: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Architects

May 26, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Interior Designers

† June 22, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Landscape Architects

† June 15, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† June 7, 1995 - 9 a.m. -- Open Meeting
† June 8, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

† June 1, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Calendar of Events

VIRGINIA COMMISSION FOR THE ARTS

† June 1, 1995 - 10 a.m. -- Open Meeting
Bloemendaal, 1800 Lakeside Avenue, Lecture Hall,
Richmond, Virginia. ♿

A quarterly business meeting to approve grants.

Contact: Lorraine Woodbury, Executive Secretary, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219-2010, telephone (804) 225-3132 or FAX (804) 225-4327.

BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

May 18, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Conference Room 4 A
and B, Richmond, Virginia. ♿ (Interpreter for the deaf
provided upon request)

A meeting to conduct board business and to hold a
public hearing in accordance with Executive Order
15(94).

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

May 18, 1995 - 11 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Conference Room 4 A
and B, Richmond, Virginia.

The Department of Professional and Occupational Regulation, pursuant to Executive Order 15(94), is proposing to undertake a comprehensive review of the regulations of the Board for Asbestos Licensing and Lead Certification. As a part of this process, public input and comments are being solicited; comments may be provided from April 3, 1995, to June 5, 1995, to the administrator of the program, David E. Dick, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the executive order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are written clearly so that they may be used and implemented by all those who interact with a regulatory process.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

BOARD FOR BARBERS

NOTE: CHANGE IN MEETING TIME
June 5, 1995 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-0500. 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: Karen W. O'Neal, Assistant Director, Board for Barbers, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

STATE CERTIFIED SEED BOARD

May 16, 1995 - 8:30 p.m. -- Open Meeting
Sheraton Inn Richmond Airport, Richmond, Virginia. ♿

A meeting to report on program activities and review certification standards. Public comment will be received.

Contact: Dr. John R. Hall, III, Chairman, Virginia Tech, 330 Smyth Hall, CSES Dept., Blacksburg, VA 24061, telephone (703) 231-9775 or FAX (703) 231-3431.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

June 1, 1995 - 2 p.m. -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East
Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter
for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

June 7, 1995 - 10 a.m. -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East
Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter
for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the department to verify meeting time, location and schedule. No comments from the public will be

entertained at the meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

June 1, 1995 - 10 a.m. -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

STATE BOARD FOR COMMUNITY COLLEGES

May 17, 1995 - 2:30 p.m. -- Open Meeting
Tidewater Community College, Portsmouth Campus, 7000 College Drive, Portsmouth, Virginia.

State board committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085 or (804) 371-8504/TDD ☎

May 18, 1995 - 10 a.m. -- Open Meeting
Omni Waterside Hotel, 777 Waterside Drive, Norfolk, Virginia.

A regularly scheduled state board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085 or (804) 371-8504/TDD ☎

COMPENSATION BOARD

May 25, 1995 - 1 p.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 710, Richmond, VA 23206-

0686, telephone (804) 786-3886, FAX (804) 371-0235 or (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Catoctin Creek Scenic River Advisory Board

† **May 19, 1995 - 2 p.m.** -- Open Meeting
Waterford Foundation, Main and Second Streets, Waterford, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, (804) 786-2121/TDD ☎, or FAX (804) 371-7899.

Shenandoah Scenic River Advisory Board

† **June 15, 1995 -- 4 p.m.** -- Open Meeting
Clarke County Courthouse, 2nd Floor, Board Room, Berryville, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, (804) 786-2121/TDD ☎, or FAX (804) 371-7899.

BOARD FOR CONTRACTORS

Recovery Fund Committee

June 28, 1995 - 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 interpreter services should contact Holly Erickson. 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 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

Calendar of Events

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

May 17, 1995 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

May 20, 1995 -- 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 Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed amendments is to alter the requirements for administration and programs in jails and lockups, and is 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 is a concern; rearranging portions of the standards to enhance clarity, organization, and consistency among standards; responding to Code of Virginia changes from the 1994 General Assembly; and incorporating recommendations from a recent Joint Legislative Audit and Review Commission study.

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-131 and 53.1-133.01 of the Code of Virginia.

Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3119.

Administration Committee

May 17, 1995 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administrative matters as may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Correctional Services Committee

May 16, 1995 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss correctional services matters as may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

June 12, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VIRGINIA INTERAGENCY COORDINATING COUNCIL ON EARLY INTERVENTION

† **June 14, 1995 - 9:30 a.m.** -- Open Meeting
Henrico Area Mental Health and Mental Retardation Services, 10299 Woodman Road, Richmond, Virginia. ☎

A quarterly meeting of the council to discuss issues relating to the implementation of a comprehensive system of early intervention services for infants and toddlers with disabilities, and their families.

Contact: Richard Corbett, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

BOARD OF EDUCATION

May 25, 1995 -- Open Meeting
June 22, 1995 -- Open Meeting
General Assembly Building, 910 Capitol Square, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meetings. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2024 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† June 14, 1995 - 6 p.m. -- Open Meeting
Virginia-American Water Company, 2223 Duke Street,
Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon
request)

An open meeting with committee members and facility
emergency coordinators to conduct business in
accordance with SARA Title III, Emergency Planning and
Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness
Coordinator, City of Alexandria, P.O. Box 178, Alexandria, VA
22313, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

June 14, 1995 - 9 a.m. -- Open Meeting
July 19, 1995 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate
Center, 4900 Cox Road, Glen Allen, Virginia.

A meeting of the joint panel. This meeting is designed to
define, assess and make recommendations in more
closely aligning the Department of Environmental
Quality's air, water and waste permitting procedures.
This meeting date is subject to change. Please contact
Kim Anderson for possible changes in meeting date or
additional information.

Contact: Kim Anderson, Administrative Staff Assistant,
Department of Environmental Quality, P.O. Box 10009,
Richmond, VA 23240, telephone (804) 762-4020, FAX (804)
762-4019 or (804) 762-4021/TDD ☎

Private Property Owners Advisory Committee on Exceptional Waters

† May 18, 1995 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate
Center, 4900 Cox Road, Training Room, Glen Allen,
Virginia. ☎

The department has established an advisory committee
to assist DEQ staff in developing criteria for assuring that
all affected private property owners are informed of
potential exceptional waters designations and their
impact on the use of private property. Other meetings of
the advisory committee have been scheduled in the
Training Room, 4900 Cox Road, for 1 p.m. on May 24; 1
p.m. on May 25; 1 p.m. on May 30; and 1 p.m. on May
31. However, these dates are not firm and are subject to
change. Persons interested in attending the meetings of
this committee should confirm the date and time with
Jean W. Gregory.

Contact: Jean W. Gregory, Environmental Program
Manager, Department of Environmental Quality, P.O. Box
10009, Richmond, VA 23240-0009, telephone (804) 762-
4113.

FAMILY AND CHILDREN'S TRUST FUND

May 19, 1995 - 9 a.m. -- Open Meeting
730 East Broad Street, 8th Floor Board Room, Richmond,
Virginia. ☎

An annual meeting to elect officers.

Contact: Jan Girardi, Development Director, Family and
Children's Trust Fund, 730 E. Broad St., 8th Floor, Richmond,
VA 23219, telephone (804) 692-1826 or FAX (804) 692-1808.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† July 12, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.

A general board meeting to discuss board business.
Public comments will be received at the beginning of the
meeting for 15 minutes. The public hearing will begin at
10 a.m. Pursuant to Executive 15(94) requiring a
comprehensive review of all regulations, the board will
receive comments on the following:

- VR 320-01-2. General Regulations of the Board of
Funeral Directors and Embalmers
- VR 320-01-3. Regulations for Preneed Funeral Planning
- VR 320-01-4. Resident Training Regulations.

These regulations will be reviewed to ensure that (i) it is
essential to protect the health and safety of the citizens
or necessary for the performance or an important
government function; (ii) it is mandated or authorized by
law; (iii) it offers the least burdensome alternative and
the most reasonable solution; and (iv) it is clearly written
and easily understandable.

Contact: Lisa Russell Hahn, Executive Director, Board of
Funeral Directors and Embalmers, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230-1717, telephone (804) 662-9907,
(804) 662-7197/TDD ☎, or FAX (804) 662-9943.

BOARD FOR GEOLOGY

† May 24, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A general board meeting.

Contact: William H. Ferguson, II, Board Administrator,
Board for Geology, 3600 W. Broad St., Richmond, VA 23230,
telephone (804) 367-8307 or (804) 367-9753/TDD ☎

Calendar of Events

GEORGE MASON UNIVERSITY

Student Affairs Committee

May 16, 1995 - 6:30 p.m. -- Open Meeting
George Mason University, Fairfax Campus, Mason Hall,
Fairfax, Virginia. ☎

A business meeting.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.

Board of Visitors

May 17, 1995 - 3:30 p.m. -- Open Meeting
George Mason University, Fairfax Campus, Mason Hall,
Fairfax, Virginia. ☎

A regular meeting of the Board of Visitors, whereby the board will hear reports of the standing committees of the board, and act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the meeting for those individuals or organizations who request it.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.

HAZARDOUS MATERIALS TRAINING COMMITTEE

† June 6, 1995 - 10 a.m. -- Open Meeting
VDES Training Room, 310 Turner Road, Richmond,
Virginia. ☎

A regularly scheduled meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990, desiring to attend this meeting should contact the Virginia Department of Emergency Services 10 days prior to the event to ensure appropriate accommodations are provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 308 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† June 1, 1995 - 10 a.m. -- Open Meeting
Stratford Inn, 2500 Riverside Drive, Danville, Virginia. ☎
(Interpreter for the deaf provided upon request)

There will be a worksession from 10 a.m. to 5 p.m.; a reception at 6:30; and an informal dinner from 7 to 10 p.m.

Contact: Paul W. Matthias, Interim Staff to the Board of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

† June 2, 1995 - 9 a.m. -- Open Meeting
Stratford Inn, 2500 Riverside Drive, Danville, Virginia. ☎
(Interpreter for the deaf provided upon request)

A business meeting.

Contact: Paul W. Matthias, Interim Staff to the Board of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

June 3, 1995 -- Public 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 amend regulations entitled: **VR 355-18-000. Waterworks Regulations (R-Phase II, IIB and V)**. The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency mandates to retain this authority. These proposed amendments to the existing Waterworks Regulations incorporate the federal Safe Drinking Water Act Phase II, IIB, and V Rules. These amendments consist of maximum contaminant levels, reporting, public notification, treatment technique and monitoring requirements for 13 new volatile organic chemicals, four revised and 24 new synthetic organic chemicals, three revised and nine new inorganic chemicals, and 11 new unregulated chemicals. These regulations follow the United States Environmental Protection Agency's standardized monitoring requirements with a nine-year compliance cycle broken into three three-year compliance periods. The monitoring requirements also define the locations and frequency with which the waterworks owners must comply. The amendments conform the state program to federal law and should avoid duplicative enforcement action by the United States Environmental Protection Agency under federal law.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Contact: Monte J. Waugh, Technical Services Assistant, Division of Water Supply Engineering, Department of Health, 1500 East Main St., Room 109, Richmond, VA 23219, telephone (804) 371-2885 or FAX (804) 786-5567.

June 3, 1995 -- Public 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 amend regulations entitled: **VR 355-18-000**.

Waterworks Regulations (Lead and Copper). The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency mandates to retain this authority. These proposed amendments to the existing Waterworks Regulations incorporate the federal Safe Drinking Water Act Lead and Copper Rule. These amendments consist of maximum contaminant levels, reporting, public notification, treatment technique and monitoring requirements for lead and copper. The amendments conform the state program to federal law and should avoid duplicative enforcement action by the United States Environmental Protection Agency under federal law.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Contact: Allen R. Hammer, P.E., Director, Division of Water Supply Engineering, Department of Health, 1500 East Main St., Room 109, Richmond, VA 23219, telephone (804) 371-2885 or FAX (804) 786-5567.

Commissioner's Waterworks Advisory Committee

May 18, 1995 - 10 a.m. -- Open Meeting
Princess Anne Community Recreation Center, 1400 Ferrell Parkway, Virginia Beach, Virginia.

A general business meeting. The committee meets the third Thursday of odd months at various locations around the state.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, Department of Health, 1500 East Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

DEPARTMENT OF HEALTH PROFESSIONS

Board of Health Professions

† May 16, 1995 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

An Administration and Budget Committee meeting. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey or Terri Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St, 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, 662-9915 or (804) 662-7197/TDD ♿

† May 16, 1995 - 11:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A Regulatory Research Committee meeting. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey or Terri Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St, 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, 662-9915 or (804) 662-7197/TDD ♿

† May 16, 1995 - 1:30 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A Compliance and Discipline Committee meeting.

Contact: Carol Stamey or Terri Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St, 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, 662-9915 or (804) 662-7197/TDD ♿

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

May 23, 1995 - 9:30 a.m. -- Open Meeting
Trigon 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 13, 1995 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

July 11, 1995 - 9:30 a.m. -- Open Meeting
Northern Virginia Community College, Annandale Campus, Annandale, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. For additional information about the meeting or location please contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632

COMMISSION ON THE FUTURE OF HIGHER EDUCATION IN VIRGINIA

June 14, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

Calendar of Events

A meeting to discuss issues of interest to higher education in Virginia. For a more detailed agenda please contact the Council of Higher Education.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

June 6, 1995 - 9 a.m. -- Open Meeting

July 11, 1995 - 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 Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

June 2, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I, New Construction Code/1993.** The purpose of the proposed action is to amend the building code to provide for local option enforcement of acoustical treatment measures in the construction of residential buildings near airports.

Statutory Authority: § 36-99.10:1 of the Code of Virginia.

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

State Building Code Technical Review Board

† **May 19, 1995 - 10 a.m.** -- Open Meeting

The Jackson Center, 501 North Second Street, 1st Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The review board hears administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Building Code Supervisor, State Building Code Office, Department of Housing and Community

Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ♿

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

May 16, 1995 - 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 Single Family Mortgage Loans to Persons and Families of Low and Moderate Income and proposed new Rules and Regulations for Allocation of Low Income Housing and Tax Credits; 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.

COUNCIL ON INFORMATION MANAGEMENT

† **May 19, 1995 - 10 a.m.** -- Open Meeting

1100 Bank Street, 9th Floor, Richmond, Virginia. ♿

A regular business meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ♿

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

† **May 25, 1995 - 10 a.m.** -- Open Meeting

Richmond Technical Center, 2020 Westwood Avenue, Richmond, Virginia. ♿

A regular meeting of the council to discuss Apprenticeship Regulatory Review.

Contact: R.S. Baumgardner, Director, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382.

LIBRARY BOARD

June 5, 1995 - 10:30 a.m. -- Open Meeting

June 6, 1995 - 10:30 a.m. -- Open Meeting

Location to be announced.

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

VLIN Task Force/Automation and Networking Committee

June 1, 1995 - 10 a.m. -- Open Meeting

The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ♿

A meeting to discuss strategic directions for the development of the Virginia Library and Information Network.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

May 17, 1995 - 11 a.m. -- Open Meeting

June 21, 1995 - 11 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting of the council, 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 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

† **June 5, 1995 - 11 a.m.** -- Open Meeting

Pearisburg Community Center, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg - Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ♿

† **June 5, 1995 - 7 p.m.** -- Public Hearing

Pearisburg Community Center, Pearisburg, Virginia.

A public hearing regarding the Town of Pearisburg - Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ♿

STATE LOTTERY BOARD

† **May 24, 1995 - 9:30 a.m.**

State Lottery Department, 900 East Main Street, 8th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda, which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

MARINE RESOURCES COMMISSION

† **May 23, 1995 - 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; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, 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 ♿

Calendar of Events

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

June 2, 1995 -- Public 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 460-04-8.7. Client Appeals Regulations**. The purpose of this proposal is to abolish the Medical Assistance Appeals Panel (MAAP) as is necessary for the efficient and economical operation of a government function and to comply with the order of the court.

42 CFR Part 431 Subpart E concerns fair hearings for applicants and recipients. This subpart implements § 1902(a)(3) of the Social Security Act (Act), which requires that a State Plan for Medical Assistance provide an opportunity for a fair hearing to any persons whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements §§ 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Act.

This section of the federal regulations establishes the requirements for a hearing system, recipient notice requirements which must be met by the agency, recipients' rights to hearings, procedures, hearing decisions, due process standards, and corrective actions. DMAS' current MAAP is not required by either federal or state law.

The present DMAS administrative appeals process involves two levels. If the client is dissatisfied with the local social services agency's decision denying or reducing eligibility or services, the decision may be appealed to DMAS. A DMAS hearing officer conducts a fair and impartial hearing and issues a decision. That decision may be appealed to a circuit court or, at the option of the appellant, to the Medical Assistance Appeal Panel. If MAAP review is sought, the MAAP decision can also be appealed to a circuit court.

On January 28, 1994, an order was entered by Judge James H. Michael, Jr., in the U.S. District Court for the Western District of Virginia in the case of Shifflet v. Kozlowski (Civil Action No. 92-00072). Judge Michael ordered DMAS to comply with federal law by issuing final agency decisions to appellants within 90 days of the appeals. The court concluded that both hearing officer decisions and MAAP decisions must comply with the 90-day rule. The department has concluded that it is impossible, with present staff, to complete both levels of appeals within 90 days.

Currently, the Virginia Medical Assistance Program operates with two levels of appeal: the hearing officer level and the Medical Assistance Appeal Panel. The

MAAP is not required by state or federal law. A recent federal court ruled that the entire administrative appeals process for applicants for or recipients of medical assistance must be completed within 90 days. The 90-day deadline cannot be met as long as both appeal levels exist.

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

Public comments may be submitted through June 2, 1995, to Diana Salvatore, Director, Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

BOARD OF MEDICINE

May 17, 1995 - 9 a.m. -- Open Meeting

May 18, 1995 - 9 a.m. -- Open Meeting

May 19, 1995 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

The Informal Conference Committee composed of three members of the board will 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 A 7 and A 15 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, FAX (804) 662-9943, or (804) 662-7197/TDD ☒

June 7, 1995 - 1 p.m. -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

July 1, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture**. The proposed amendments clarify prohibited sexual contact with patients; remove burdensome, outdated language on acupuncture; and eliminate the requirements for a state examination for chiropractic licensure.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 et seq. of the Code of Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9925.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

May 18, 1995 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Smith Hall, Lexington, Virginia. ☒

A finals meeting and regular meeting of the Board of Visitors to (i) hear committee reports; (ii) approve awards, distinctions, and diplomas; (iii) discuss personnel changes; and (iv) elect president pro tem. This is not a meeting for public comment.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

June 6, 1995 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, U.S. Route 23, Room 219, Big Stone Gap, Virginia.

June 16, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-03-19. Coal Surface Mining Reclamation Regulations.** The proposed amendment makes permanent the October 19, 1994, emergency regulation amendment allowing continued use of scalp rock in highwall backfills on surface coal mines.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted through June 16, 1995, to Danny Brown, Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

Contact: Les Vincent, Reclamation Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

VIRGINIA MUSEUM OF FINE ARTS

† **June 6, 1995 - 8 a.m.** -- Open Meeting
† **July 5, 1995 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☒

A briefing for museum officers of museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Collections Committee

† **May 15, 1995 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Library Reading Room, Richmond, Virginia. ☒

A meeting to consider gift offers, purchase recommendations and loans of art works. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Education and Programs Committee

† **May 15, 1995 - 1 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☒

A review of yearly programming activities at the museum, as well as plans for the future. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Finance Committee

† **May 18, 1995 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☒

A review of the budget and consideration of food service policy recommendations. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Planning Committee

† **June 7, 1995 - 9:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Library Reading Room, Richmond, Virginia. ☒

A review of the Strategic Plan Steering Committee meeting of June 6. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Calendar of Events

Strategic Plan Steering Committee

† June 6, 1995 - 2 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Library
Reading Room, Richmond, Virginia. ☎

A long-range planning workshop. Public comment will
not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum,
Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond,
VA 23221, telephone (804) 367-0553.

Board of Trustees

† May 18 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue,
Auditorium, Richmond, Virginia. ☎

An annual meeting of the board including a review of the
year, committee reports, budget review, and staff
reports. Public comment will not be received at the
meeting.

Contact: Emily C. Robertson, Secretary of the Museum,
Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond,
VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

May 19, 1995 -- Public comments may be submitted through
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Board of Nursing intends to
amend regulations entitled: **VR 495-01-1. Regulations
of the Board of Nursing.** The purpose of the proposed
amendments is to facilitate the process of approval of
nursing and nurse aide education programs in
accordance with Administrative Process Act
requirements and to comply with statutory change for
practice pending licensure resulting from changes in the
administration of examinations.

Statutory Authority: §§ 54.1-2400 and 54.1-3000 et seq. of
the Code of Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board
of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9909, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

May 22, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

Two special conference committees will conduct informal
conferences in the morning. A panel of the board will
conduct formal hearings in the afternoon.

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, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

May 23, 1995 - 9 a.m. -- Open Meeting

May 24, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A regular meeting of the board to consider matters
relating to nursing education programs, discipline of
licensees, licensure by examination and other matters
under the jurisdiction of the board. Public comment will
be received during an open forum beginning at 11 a.m.,
Tuesday May 23, 1995.

On May 23, 1995, at 1 p.m., pursuant to Executive Order
15(94) requiring a comprehensive review of all
regulations, the board will receive comments on the
Board of Nursing Regulations, VR 495-01-01. These
regulations will be reviewed to ensure that (i) they are
essential to protect the health and safety of the citizens
or necessary for the performance of an important
government function; (ii) they are mandated or
authorized by law; (iii) they offer the least burdensome
alternative and most reasonable solution; and (iv) they
are clearly written and easily understandable. Written
comment may be sent to the board before June 15,
1995.

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, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

May 25, 1995 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A panel of the Board of Nursing will conduct formal
hearings. If the agenda for the panel is not filled with
formal hearings, two special conference committees will
conduct informal conferences as time permits. Public
comment will not be received.

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, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

June 2, 1995 -- Public comments may be submitted through
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Board of Nursing and the
Board of Medicine intend to amend regulations entitled:
**VR 495-02-1 and VR 465-07-1. Regulations
Governing the Licensure of Nurse Practitioners.** The
Boards of Nursing and Medicine propose amendments to
these regulations as the result of a biennial review. The
changes proposed will add a definition of collaboration,
delete a restrictive definition of supervision and clarify
the categories of licensed nurse practitioners.
Clarification of compliance with the Administrative

Process Act in administrative proceeding is also included.

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

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎.

BOARD OF OPTOMETRY

May 17, 1995 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

Informal conference meetings. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

May 18, 1995 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A general board meeting. Discussion of Executive Order 15(94) and discussion of public comment on proposed regulations. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

May 22, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-1. Regulations of the Board of Pharmacy.** The Board of Pharmacy is proposing amendments to its regulations necessary to implement legislation enacted by the 1994 General Assembly allowing graduates of foreign schools of pharmacy to apply for licensure as a pharmacist.

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

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

DEPARTMENT OF STATE POLICE

June 16, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.** These regulations establish the procedures and forms to be used in the registration of persons required by law to register with the Sex Offender Registry and the lawful dissemination of the Sex Offender Registry.

Statutory Authority: § 19.2-390.1 of the Code of Virginia.

Contact: Lieutenant John G. Weakley, Assistant Records Management Officer, Department of State Police, Records Management Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

POLYGRAPH EXAMINERS ADVISORY BOARD

† June 27, 1995- 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

The board will meet to review new enforcement procedures, administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns, and to consider other matters which may require board action. A public comment period will be scheduled at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Polygraph Examiners Advisory Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☎

BOARD OF PROFESSIONAL COUNSELORS

May 18, 1995 - 10:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Rooms 1, 3, and 4, Richmond, Virginia. ♿

Informal conferences to be held in accordance to § 9-6.14:11 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

† May 18, 1995 - 5 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting of the Executive Committee to review credentials.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Board of Professional

Calendar of Events

Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

May 19, 1995 - 8:30 a.m. -- CANCELLED

Department of Health Professions, 6606 West Broad Street, Conference Rooms 1, 3, and 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The informal conference regarding credentials and the public hearing to receive comments on the Regulations Governing the Certification of Rehabilitation Providers - Standards and Renewal Fees have been cancelled. Also, the regular meeting to conduct general board business to (i) consider education and experience requirements for the certification of rehabilitation providers; (ii) act on committee reports and correspondence; and (iii) act on any other matters under the jurisdiction of the board has been cancelled.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† May 18, 1995 - Noon -- Open Meeting

Soza and Company, 8550 Arlington Boulevard, Fairfax, Virginia. ☎

A three-member committee of the board will discuss the Virginia Board for Accountancy Regulations, the Virginia Board for Asbestos Regulations, the Virginia Board for Cosmetology Regulations, and the Virginia Fair Housing Regulations. The review is pursuant to Executive Order 15(94). Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

† June 12, 1995 - 10 a.m. -- Open Meeting

Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

† June 12, 1995 - 2 p.m. -- Public Hearing

Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia. ☎

The board will conduct a public hearing in connection with its study of the feasibility of including carpenters and masons in the Tradesmen Certification Program. The study is a result of Senate Joint Resolution 321, which passed in the 1995 session of the Virginia General Assembly. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ADVISORY COUNCIL

† June 15, 1995 - 9 a.m. -- Open Meeting

Shoney's Inn of Richmond, 7007 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regularly scheduled bi-monthly meeting of the council. There will be opportunity for public comment at 9 a.m.

Contact: Barbara Hoban, Advocate, Department for Rights of Virginians with Disabilities, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042 or toll-free 1-800-552-3962.

BOARD OF PSYCHOLOGY

May 16, 1995 - 10 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎

The board will meet to conduct general board business, and to consider regulations for the certification of sex offender treatment providers. Public comment will be received between 10:15 and 10:30 a.m.

Contact: Evelyn B. Brown, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

REAL ESTATE APPRAISER BOARD

May 23, 1995 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special

accommodations or interpreter 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 accommodations at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

† **May 31, 1995 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will discuss legislation enacted by the 1995 session of the General Assembly.

Contact: Emily O. Wingfield, Acting Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

BOARD OF REHABILITATIVE SERVICES

† **May 25, 1995 - 10 a.m.** -- Open Meeting
Woodrow Wilson Rehabilitation Center, Route 250, Fishersville, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct quarterly business.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD ☎

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

May 25, 1995 - 4 p.m. -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

May 24, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 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, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

May 23, 1995 - 10 a.m. -- Open Meeting
901 East Byrd Street, 19th Floor, Richmond, Virginia. ☎

A general meeting of the Board of Directors.

Contact: Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., P.O. Box 798, Richmond, VA 23206-0798 or FAX (804) 225-3384.

BOARD OF SOCIAL SERVICES

† **May 16, 1995 - 9 a.m.** -- Open Meeting
† **May 17, 1995 - 9 a.m.** -- Open Meeting
† **May 18, 1995 - 9 a.m.** -- Open Meeting
Theater Row Office Building, Department of Social Services, 730 East Broad Street, Richmond, Virginia. ☎

A work session and general business meeting.

Contact: Phyllis Sisk, Special Assistant to the Commissioner, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900 or FAX (804) 692-1949.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

May 18, 1995 - 9:30 a.m. -- Open Meeting
Augusta County Government Center, South Board Room, Verona, Virginia.

A regular bi-monthly business meeting in conjunction with a tour sponsored by the Headwaters Soil and Water Conservation District.

Contact: Linda J. Cox, Administrative Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2152.

Calendar of Events

DEPARTMENT OF TAXATION

† **June 12, 1995 - 10 a.m.** -- Open Meeting
2220 West Broad Street, Training Room, Richmond, Virginia. ☎

A meeting to discuss a proposed set of new guidelines for local business, professional and occupational license taxes. Pursuant to § 58.1-3701, the guidelines are exempt from the Administrative Process Act. The draft of the new guidelines will not be published in the Virginia Register, but may be obtained from the Department of Taxation after May 15, 1995. Interested parties are invited to submit comments on the new guidelines in person or in writing no later than June 12, 1995.

Contact: John Josephs, Tax Policy Analyst, or Bill Reynolds, Tax Auditor, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010 or FAX (804) 367-6020.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

May 17, 1995 - 2 p.m. -- Open Meeting
Harry L. Coomes Recreation Center, 300 Stanley Street, Abingdon, 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.

May 18, 1995 - 10 a.m. -- Open Meeting
Harry L. Coomes Recreation Center, 300 Stanley Street, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **May 17, 1995 - 10 a.m.** -- Public Hearing
Richmond District Office, 2400 Pine Forest Drive, Colonial Heights, Virginia.

† **May 18, 1995 - 11 a.m.** -- Public Hearing
Northern Virginia Community College, Woodbridge Campus, Woodbridge, Virginia.

† **May 22, 1995 - 1 p.m.** -- Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

† **July 15, 1995** -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled: **VR 385-01-12. Hauling Permit Manual**, and **adopt** regulations entitled: **VR 385-01-12:1. Hauling Permit Manual**. The revised Hauling Permit Manual of the Commonwealth Transportation Board identifies conditions under which overweight and oversize hauling permits may be granted, and sets forth the fee structure for the permits. The revised manual eliminates obsolete requirements and policies required to obtain overweight or oversize hauling permits, expands weight allowances under general blanket conditions, and makes obtaining overweight and oversize permits less restrictive.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Contact: William R. Childress, Hauling Permit Manager, Department of Transportation, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676 or toll-free 1-800-828-1120/TDD ☎

TREASURY BOARD

May 17, 1995 - 9 a.m. -- Open Meeting
June 21, 1995 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia.

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Treasury Board, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

May 17, 1995 - 9:30 a.m. -- Open Meeting
NOTE: CHANGE IN MEETING LOCATION
Ramada Inn Conference Center, 950 J. Clyde Morris Boulevard, Newport News, Virginia.

The commission will conduct a regular monthly meeting including a review of its regulations and a report from Colonial Downs.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Vocational Rehabilitation Advisory Council

May 20, 1995 - 10 a.m. -- Open Meeting
Administrative Headquarters, 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 May 4, 1995.

Contact: James G. Taylor, Vocational Rehabilitation Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

† **June 29, 1995 - 10 a.m. -- Public Hearing**
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

The board will hold a public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on May 1, 1994. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor St., Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on June 29, 1995, will be made a part of the hearing record.

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **July 27, 1995 - 10 a.m. -- Open Meeting**
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 A and B, Richmond, Virginia. ☎

There will be a general board meeting beginning at 10 a.m., followed by a public hearing at 11 a.m. in compliance with Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

STATE WATER CONTROL BOARD

May 16, 1995 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia. ☎

The board will hold a formal evidentiary hearing to consider a petition for a formal hearing filed by Texaco Lubricants Company regarding the issuance of Virginia Pollutant Discharge Elimination System (VPDES) No. VA0004821. This hearing is being held pursuant to §§ 9-6.14:12 and 62.1-44.25 of the Code of Virginia, as well as the board's Procedural Rule No. 1 and VR 680-14-01 (Permit Regulation).

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

June 28, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road., Board Room, Glen Allen, Virginia. ☎

A regular quarterly meeting.

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

VIRGINIA WORKERS' COMPENSATION COMMISSION

June 2, 1995 - 10 a.m. -- Public Hearing
Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia. ☎

A public hearing to discuss the definition of "community" as it is construed in § 65.2-605 of the Code of Virginia and proposed Rule 14 of the Virginia Workers' Compensation Commission. Speakers will be limited to 10 minutes each and should preregister. Copies of proposals under consideration may be obtained from Kim Lewis after May 1, 1995.

Contact: Kim S. Lewis, Administrative Staff Assistant, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-8661 or FAX (804) 367-9740.

LEGISLATIVE

Calendar of Events

VIRGINIA CODE COMMISSION

Title 15.1 Recodification Task

May 18, 1995 - 10 a.m. -- Open Meeting

May 19, 1995 - 10 a.m. -- Open Meeting

General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia.

A meeting to continue drafting revision of Title 15.1 to present to the Virginia Code Commission. SJR 2.

Contact: Michelle Browning, Senior Operations Staff Assistant, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JUVENILE JUSTICE SYSTEM TASK FORCE

June 27, 1995 - 10 a.m. -- Open Meeting

Tidewater area; location to be announced.

A regular meeting. HJR 604.

Contact: Joyce Huey, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

June 2, 1995 - 2 p.m. -- Open Meeting

Stratford Hall, Westmoreland County, Virginia.

A final meeting to review the 1995 session and the final report of the commission.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Building, 910 Capitol St., Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

JOINT SUBCOMMITTEE STUDYING SCHOOL DROP OUT AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM AMONG YOUTH AND ADULTS

† June 1, 1995 - 10 a.m. -- Open Meeting

General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia.

A continuing study of this resolution. Individuals requiring interpreter services or other assistance should contact Dawn Smith 10 days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23230, telephone (804) 786-7681.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 15

Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Alcoholic Beverage Control Board
† Museum of Fine Arts, Virginia
- Collections Committee
- Education and Programs Committee

May 16

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Certified Seed Board, State
Corrections, Board of
- Correctional Services Committee
† Health Professions, Board of
Housing Development Authority, Virginia
Psychology, Board of
† Social Services, State Board of
Water Control Board, State

May 17

Community Colleges, State Board for
Corrections, Board of
- Administration Committee
George Mason University
- Board of Visitors
Local Debt, State Council on
Medicine, Board of
Optometry, Board of
† Social Services, State Board of
Transportation Board, Commonwealth
Treasury Board
Virginia Racing Commission

May 18

Asbestos Licensing and Lead Certification, Board for
Community Colleges, State Board for
† Environmental Quality, Department of
- Private Property Owners Advisory Committee on
Exceptional Waters
Health, Department of
- Commissioner's Waterworks Advisory Committee
Medicine, Board of
Military Institute, Virginia
- Board of Visitors
† Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees
Optometry, Board of
Professional Counselors, Board of
† Professional and Occupational Regulation, Board for
† Social Services, State Board of
Soil and Water Conservation Board, Virginia
Transportation Board, Commonwealth
Title 15.1 Recodification Task Force

May 19

† Conservation and Recreation, Department of
- Catoctin Creek Scenic River Advisory Board

Family and Children's Trust Fund
 † Housing and Community Development, Department of
 - State Building Code Technical Review Board
 † Information Management, Council on
 Medicine, Board of
 Title 15.1 Recodification Task Force

May 20

Visually Handicapped, Department for the
 Vocational Rehabilitation Advisory Council

May 22

Nursing, Board of

May 23

Health Services Cost Review Council, Virginia
 † Marine Resources Commission
 Nursing, Board of
 Real Estate Appraiser Board
 Small Business Financing Authority, Virginia

May 24

† Geology, Board for
 † Lottery Board, State
 Nursing, Board of
 Sewage Handling and Disposal Appeals Review Board

May 25

Compensation Board
 Education, Board of
 † Labor and Industry, Department of
 - Apprenticeship Council
 Nursing, Board of
 † Rehabilitative Services, Board of
 Richmond Hospital Authority
 - Board of Commissioners

May 26

Architects, Professional Engineers, Land Surveyors and
 Landscape Architects, Board for
 - Board for Architects

May 31

Alcoholic Beverage Control Board
 † Real Estate Board

June 1

† Architects, Professional Engineers, Land Surveyors
 and Landscape Architects, Board for
 - Board for Professional Engineers
 † Arts, Virginia Commission for the
 Chesapeake Bay Local Assistance Board
 - Central Area Review Committee
 - Southern Area Review Committee
 † Health, State Board of
 Library of Virginia
 - VLIN Task Force/Automation and Networking
 Committee
 † School Drop Out and Ways to Promote the
 Development of Self-Esteem Among Youth and Adults,
 Joint Subcommittee Studying

June 2

† Air Pollution, State Advisory Board on
 † Health, State Board of
 Population Growth and Development, Commission on

June 5

Barbers, Board for
 Library Board
 † Local Government, Commission on

June 6

Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
 † Hazardous Materials Training Committee
 Hopewell Industrial Safety Council
 Library Board
 † Museum of Fine Arts, Virginia
 - Strategic Plan Steering Committee

June 7

Chesapeake Bay Local Assistance Board
 - Northern Area Review Committee
 † Museum of Fine Arts, Virginia
 - Planning Committee

June 8

† Architects, Professional Engineers, Land Surveyors
 and Landscape Architects, Board for
 - Board for Land Surveyors

June 12

Alcoholic Beverage Control Board
 Cosmetology, Board for
 † Professional and Occupational Regulation, Board for
 † Taxation, Department of

June 13

Higher Education for Virginia, State Council on

June 14

† Emergency Planning Committee, Local - City of
 Alexandria
 Environmental Quality, Department of
 Higher Education in Virginia, Commission on the Future
 of
 † Interagency Coordinating Council on Early
 Intervention, Virginia

June 15

† Architects, Professional Engineers, Land Surveyors
 and Landscape Architects, Board for
 - Board for Landscape Architects
 † Conservation and Recreation, Department of
 - Shenandoah Scenic River Advisory Board
 † Protection and Advocacy for Individuals with Mental
 Illness Advisory Council

June 21

Local Debt, State Council on
 Treasury Board

June 22

† Architects, Professional Engineers, Land Surveyors
 and Landscape Architects, Board for
 - Board for Interior Designers
 Education, Board of

June 26

Alcoholic Beverage Control Board

Calendar of Events

June 27

† Polygraph Examiners Advisory Board

June 28

Contractors, Board for
Water Control Board, State

June 30

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for

July 5

† Museum of Fine Arts, Virginia

July 11

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Higher Education for Virginia, State Council on
Hopewell Industrial Safety Council

July 12

† Funeral Directors and Embalmers, Board of

July 19

Environmental Quality, Department of

July 27

† Waste Management Facility Operators, Board for

PUBLIC HEARINGS

May 17

† Transportation, Department of

May 18

Asbestos Licensing and Lead Certification, Board for
† Transportation, Department of

May 22

† Transportation, Department of

June 2

Workers' Compensation Commission, Virginia

June 5

† Local Government, Commission on

June 6

Mines, Minerals and Energy, Department of

June 7

Medicine, Board of

June 12

† Professional and Occupational Regulation, Board for

June 29

† Voluntary Formulary Board, Virginia