

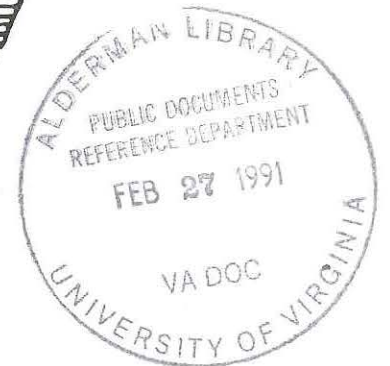
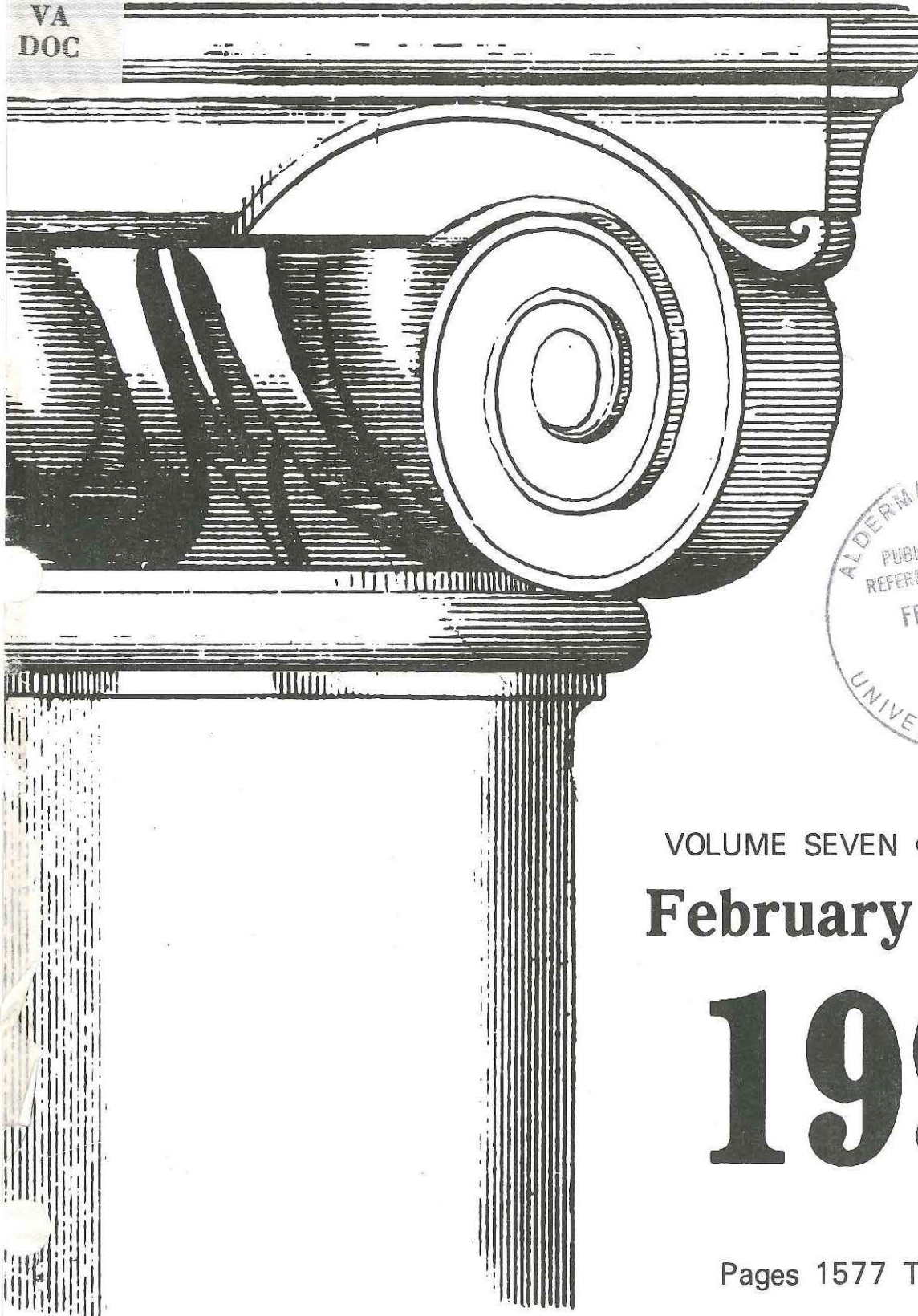
THE VIRGINIA REGISTER

OF REGULATIONS

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

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PROPOSED REGULATIONS

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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 AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

Title of Regulation: VR 115-04-03. Rules and Regulations for Enforcement of the Virginia Pesticide Law.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public Hearing Date: May 10, 1991 - 10:30 a.m.
(See Calendar of Events section for additional information)

Summary:

The 1989 Virginia Pesticide Control Act authorizes the Pesticide Control Board to adopt regulations to accomplish the Act's purpose. To this end, the board has proposed, among others, VR 115-04-23, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act. Parts of this proposed regulation are intended to supersede § 21, "Categories for commercial applicator"; § 22, "Standards for certification of commercial applicators"; § 24, "Standards for certification of private applicators"; and § 25, "Standards for application of pesticides classified for restricted use by noncertified applicators" of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law. The provisions of VR 115-04-03 are to remain in effect, according to the Act, "until repealed by the Pesticide Control Board." The purpose of this regulatory action is to propose the repeal of these four identified sections of VR 115-04-03.

VR 115-04-03. Rules and Regulations for Enforcement of the Virginia Pesticide Law.

§ 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise. Words used in singular form in these regulations include the plural, and vice versa, as appropriate.

"Active ingredient" means an ingredient which:

1. Is independently capable of:
 - a. Preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, nematodes, or other pests; or

- b. Altering through physiological action the behavior of ornamental or crop plants or their produce; or

- c. Causing leaves or foliage to drop from a plant; or

- d. Artificially accelerating the drying of plant tissue.

2. Is present in the product in an amount sufficient to be effective; and

3. Is not antagonistic to the activity of the principal active ingredients. The commissioner may require an ingredient to be designated as an active ingredient if, in his opinion, it sufficiently increases the effectiveness of the pesticide to warrant such action.

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

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, including any algae or other aquatic weed.

"Law" means Articles 1, 2, 3 and 4 (§ 3.1-189 et seq.) of Chapter 14 of Title 3.1 of the Code of Virginia, known as the Virginia Pesticide Law.

"Rodent" means any animal of the order Rodentia including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.

§ 2. Language to be used.

All statements, words, and other information required by the law or by these regulations to appear on the label or labeling of any pesticide shall be in the English language. However, in the case of articles intended solely for distribution to points outside the United States, the appropriate foreign language may be used.

§ 3. Label.

- A. The name and address of the manufacturer shall appear on the label. If the registrant's name appears on the label and the registrant is not the manufacturer, or if the name of the person for whom the pesticide was manufactured appears on the label, it must be qualified by appropriate wording such as "Packed for", "Distributed by", or "Sold by" to show that the name is not that of the manufacturer.

- B. The name, brand, or trademark of the pesticide

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appearing on the label shall be that under which the pesticide is registered.

C. The net content declaration shall comply with the Weights and Measures Act of Virginia Chapter 35 (§ 3.1-919 et seq.) of Title 3.1 of the Code of Virginia and its regulations.

D. Directions for use are required for the protection of the public. The public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage. Pesticides restricted by these regulations shall be registered only for their permitted uses, and the label shall have a prominent statement to the effect that the product is to be used only as directed. Directions for use are considered necessary in the case of most retail containers, with the following exceptions.

Directions may be omitted:

1. If the pesticide is to be used by manufacturers in their regular manufacturing processes, provided that the label clearly shows that the product is intended for use only in manufacturing processes, and bears an ingredient statement giving the name and percentage of each of the active ingredients.

2. If the pesticide is sold to distributors for dilution or mixing with carriers to prepare pesticides for sale to the public, provided that the label bears an ingredient statement giving the name and percentage of each of the active ingredients; and the pesticide is a well-known substance or mixture of substances; and there is readily available general knowledge of the composition, methods of use, and effectiveness of the product for pesticide purposes.

§ 4. Ingredient statement.

A. Location of ingredient statement.

The ingredient statement shall appear on that part of the label displayed under customary conditions of purchase; except in cases where the commissioner determines that, due to the size or form of the container, a statement on that portion of the label is impractical, and permits the statement to appear on another side or panel of the label. When so permitted, the ingredient statement shall be in larger type and more prominent than would otherwise be required. The ingredient statement shall run parallel with other printed matter on the panel of the label on which it appears, and shall be on a clear contrasting background.

B. Names of ingredients.

The well-known common name of the ingredient shall be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the

commissioner may permit the use of a new or coined name which he finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the commissioner may prescribe the terms under which it may be used. A trademark or trade name may not be used as the name of an ingredient, except when it has become a common name.

C. Percentages of ingredients.

Percentages of ingredients shall be determined by weight, and the sum of the percentages of the ingredients shall be 100. Sliding scale forms of ingredient statements shall not be used.

D. Designation of ingredients.

Active ingredients and inert ingredients shall be so designated, and the term "inert ingredient" shall appear in the same size type and be as prominent as the term "active ingredient".

§ 5. Pesticides highly toxic to humans.

A. Pesticides which fall within any of the following categories when tested on laboratory animals as specified in paragraphs 1, 2, or 3 of this subsection are highly toxic to humans or contain substances or quantities of substances highly toxic to humans within the meaning of the law. Such pesticides shall be referred to as pesticides highly toxic to humans. Upon application and after an opportunity for a hearing, the commissioner may exempt any pesticide from these requirements which is not highly toxic to humans:

1. Oral toxicity. A pesticide which has single dose LD50 of 50 milligrams or less per kilogram of body weight, when administered orally to both male and female rats which have been fasted for a period of 24 hours (or to other rodent or nonrodent species specified by the commissioner); or

2. Toxicity on inhalation. A pesticide which has an LC50 of 2,000 micrograms or less of dust or mist per liter of air or 200 parts per million or less by volume of a gas or vapor, when administered by continuous inhalation for one hour to both male and female rodent or nonrodent species specified by the commissioner, if he finds that it is reasonably foreseeable that such concentration will be encountered by humans; or

3. Toxicity by skin absorption. A pesticide which has an LD50 of 200 milligrams or less per kilogram of body weight, when administered by continuous contact for 24 hours with the bare skin of rabbits (or other rodent or nonrodent species specified by the commissioner).

B. Test on other species.

Tests on other specified rodent or nonrodent species may be required by the commissioner whenever he finds that tests on other species are necessary to determine whether a pesticide is highly toxic to humans.

C. Terms LD50 and LC50.

An LD50 as used in connection with oral toxicity and skin absorption toxicity tests is the dose, and LC50 as used in connection with inhalation tests is the concentration, which is expected to cause death within 14 days in 50% of the test animals so treated.

D. Toxicity based on human experience.

If the commissioner finds, after an opportunity for hearing, that available data on human experience with any pesticide indicates a greater toxicity than found in the tests on animals, the human data shall take precedence; and if he finds that the protection of the public so requires, the commissioner shall declare such a pesticide to be highly toxic to humans for the purposes of this law and its regulations.

§ 6. Warning or caution statement.

A. Warning or caution statements which are necessary and, adequate to prevent injury to humans, useful vertebrate, and invertebrate animals, and useful vegetation, must appear on the label in a place sufficiently prominent to warn the user. They shall state clearly and in nontechnical language the particular hazard involved in the use of the pesticide (e.g., ingestion, skin absorption, inhalation, flammability, or explosion), and the precautions to be taken to avoid accident, injury, or damage.

B. The label of every pesticide shall bear warnings or cautions which are necessary for the protection of the public, including the statement, "Keep out of reach of children", and a signal word such as "DANGER", "WARNING", or "CAUTION", which the commissioner may prescribe, on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of that part of the required warnings and cautions other than the statement "Keep out of reach of children" and the required signal word, if in his opinion such variations would not be injurious to the public. If a pesticide is marketed in channels of trade where the likelihood of contact with children is extremely remote, or if the nature of the product is such that it is likely to be used on infants or small children without causing injury under any reasonably foreseeable conditions, the commissioner may waive the requirements of the statement "Keep out of reach of children". The commissioner may permit a statement such as "Keep away from infants and small children" instead of the statement "Keep out of reach of children", if he determines that such a variation would not be injurious to the public.

C. The label of every pesticide which is highly toxic to humans shall bear the words "DANGER" and "POISON" in red on a contrasting background next to the skull and crossbones, and an antidote statement including directions to call a physician immediately, on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of the antidote statement if some reference such as "See antidote statement on back panel" appears on the front panel near the word "POISON" and the skull and crossbones.

D. Warning or caution statements which comply with the requirements of the regulations for the enforcement of the Federal Insecticide, Fungicide and Rodenticide Act shall be considered in compliance with the requirements of these regulations.

§ 7. Registration.

A. Eligibility.

Any manufacturer, packer, seller, distributor, or shipper of a pesticide is eligible as a registrant and may register the pesticide.

B. Procedure for registration.

Application for registration should be made on the form provided. Application forms will be furnished upon request to the Virginia Department of Agriculture and Consumer Services, Office of Pesticide Regulation, Post Office Box 1163, Richmond, Virginia 23209. Application should be submitted as far in advance as possible, before the time registration is desired to take effect.

C. Effective date of registration.

Registration of a pesticide shall become effective on the date the certificate of registration is issued.

D. Responsibility of a registrant.

The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide.

E. Changes in labeling or formula.

1. Changes in the labeling, or formula of a registered pesticide, shall be submitted in advance to the Office of Pesticide Regulation. The registrant shall describe the exact changes desired and the proposed effective date; and upon request, shall submit a description of tests which justify such changes.

2. After the effective date of a change in labeling or formula, the product shall be marketed only under the new label or formula, except that a reasonable time may be permitted by the commissioner to dispose of properly labeled stocks of old products.

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F. Claims shall conform to registration.

Claims made for a pesticide shall not differ in substance from representations made in connection with registration, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended.

§ 8. Coloration and discoloration.

A. Unless exempted by § 13 of these regulations, the white pesticides hereinafter named shall be colored or discolored in compliance with this section. The hues, values, and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, Baltimore, Maryland.

B. Coloring agent.

The coloring agent shall produce a uniformly colored product not subject to change in color beyond the minimum requirements specified in these regulations during ordinary conditions of marketing or storage. They must not cause the product to become ineffective, or cause damage when used as directed.

C. Arsenicals and barium fluosilicate.

Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue except the yellow-reds and yellows, having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

D. Sodium fluoride and sodium fluosilicate.

Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

E. Exceptions.

The commissioner, after the opportunity for a hearing, may permit other hues to be used for any particular purpose, if the prescribed hues are not feasible for the purpose, and if this action will not be injurious to the public.

§ 9. Misbranding.

A. False or misleading statements.

Among representations in the labeling of a pesticide which render it misbranded are the following:

1. A false or misleading statement concerning the composition of the product.
2. A false or misleading statement concerning the

effectiveness of the product as a pesticide or device.

3. A false or misleading statement about the value of the product for purposes other than as a pesticide or device.

4. A false or misleading comparison with other pesticides or devices.

5. A false or misleading representation as to the safety of the pesticide or of its ingredients, including a statement such as "nonpoisonous," "noninjurious," or "nonhazardous," unless the product is in fact safe from all conditions.

6. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of this Commonwealth.

7. The name of a pesticide which contains two or more active ingredients, if it suggests the name of one or more but not all such ingredients, even though the names of the other ingredients are stated elsewhere in the labeling.

8. A true statement used in a way which would give a false or misleading impression to the purchaser.

§ 10. Enforcement.

A. Collection of samples.

Samples of pesticides and devices shall be collected by a designated agent. An official representative sample shall be one which is taken by the commissioner or his duly authorized agent. An unbroken original package shall be taken as the official sample where the pesticide is packed in small bottles or small packages. Where the pesticide is packed in larger containers, the official sample shall be a portion taken from one original package in a lot.

B. Examination of samples.

Methods of sample examination shall be those adopted and published by the Association of Official Analytical Chemists, where applicable, and any other methods necessary to determine if the product complies with the law.

C. Notice of apparent violation.

1. If from an examination or analysis, a pesticide or device appears to be in violation of the law, a written notice shall be sent to the person against whom criminal proceedings are contemplated, giving him an opportunity to offer a written explanation. The notice shall state the manner in which the sample fails to meet the requirements of the law and the regulations.

2. In addition to his reply to the notice, any person may file, within 20 days of receipt of the notice, a

written request for an opportunity to present an oral defense.

3. No notice or hearing shall be required prior to the seizure of any pesticide or device.

§ 11. Notice of judgment.

Publication of court judgments in cases heard under the criminal or seizure provision of the law shall be in the form of notices, circulars, or bulletins as directed by the commissioner.

§ 12. Products for experimental use.

A. Articles for which no permit is required.

1. A substance or mixture of substances being tested only to determine its value as a pesticide, or to determine its toxicity or other properties, and is not considered a pesticide within the meaning of § 3.1-198.1 of the Code of Virginia.

2. A pesticide shipped or delivered for experimental use by or under the supervision of any federal or state agency authorized by law to conduct research in the field of economic poisons shall not be subject to the provisions of the law and these regulations.

B. Articles for which permit is required.

1. A pesticide shipped or delivered for experimental use by other qualified persons shall be exempt from the provisions of the law and of these regulations if a permit is obtained beforehand. Permits may be either, specific or general. A specific permit will be issued to cover a particular shipment on a specified date to a named person. A general permit will be issued to cover more than one shipment over a period of time to different persons.

2. If a pesticide is to be tested for a use which is likely to leave residue on or in food or feed, a permit for shipment or delivery will be issued only when:

a. The food or feed product will only be used as food or feed for laboratory or experimental animals, or

b. Convincing evidence is submitted by the applicant that the proposed use will not produce an amount of residue which would be hazardous to humans or animals.

3. All applications for permits covering shipments for experimental use shall include:

a. Name and address of the shipper and places from which the shipment will be made.

b. Proposed date of shipment or proposed shipping

period, not to exceed one year.

c. A statement of the composition of material to be covered by the permit which should apply to a single material or group of closely allied formulations of the material.

d. A statement of the approximate quantity to be shipped.

e. A statement of the nature of the proposed experimental program, including the type of pests or organisms to be experimented with, the crops or animals for which the pesticide is to be used, the areas where the program will be conducted, and the results of previous tests, where necessary, to justify the quantity requested.

f. The percentage of the total quantity specified under subparagraph d of this paragraph which will be supplied without charge to the user.

g. A statement that the pesticide is intended for experimental use only.

h. Proposed labeling which must bear:

(1) The prominent statement "For experimental use only" on the container label and any accompanying circular or other labeling,

(2) A warning or caution statement which may be necessary and if complied with, adequate for the protection of those who may handle or be exposed to the experimental substance,

(3) The name and address of the applicant for the permit,

(4) The name or designation of the substance, and

(5) If the pesticide is to be sold, a statement of the names and percentages of the principal active ingredients in the product.

(6) If the shipper submits a copy of the valid experimental permit and accepted labeling issued under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, the commissioner may exempt the shipper from submitting the data and information specified in subparagraphs (e) through (h).

4. The commissioner may limit the quantity of a pesticide covered by a permit if the available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of the proposed experiment and he may impose other limitations in the permit for the protection of the public.

C. Cancellation of permits.

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Any permit for shipment for experimental use may be cancelled at any time for any violation of its terms.

§ 13. Exemption.

Any pesticide specified in § 8 of these regulations which is intended solely for use by a textile manufacturer or commercial laundry, cleaner, or dyer as a mothproofing agent, or used in the manufacture or processing of rubber, glue or leather goods, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric and will not be present in these finished goods in sufficient quantities to cause injury to any person, shall be exempt from the requirements of § 3.1-233(4) of the Code of Virginia, and § 8 of these regulations.

§ 14. Declaration of pests.

In addition to those pests defined in Article 1 of the law, the commissioner hereby declares as pests the following forms of plant and animal life and viruses:

1. Mammals, including but not limited to dogs, cats, moles, bats, wild carnivores, armadillos, and deer;
2. Birds, including but not limited to starlings, English sparrows, crows, and blackbirds;
3. Fishes, including but not limited to the jawless fishes such as the sea lamprey, the cartilaginous fishes such as the sharks, and the bony fishes such as the carp;
4. Amphibians and reptiles, including but not limited to poisonous snakes;
5. Aquatic and terrestrial invertebrates, including but not limited to slugs, snails, and crayfish;
6. Roots and other plant parts growing where not wanted;
7. Viruses, other than those on or in humans or animals.

§ 15. Handling and storage.

No person shall handle, transport, store, display, or distribute pesticides in a manner which may endanger humans and the environment, or food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticides.

§ 16. Disposal.

No person shall dispose of, discard, or store any pesticides or pesticide containers in a manner which may cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollute any water supply or waterway.

§ 17. Application and equipment.

A. No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leakproof. All spray distribution systems shall be leakproof, and any pumps which these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge.

B. All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a backsiphon or backflow exists.

§ 18. Cancellation authority.

All pesticides which have been cancelled or suspended by the United States Government are subject to cancellation in Virginia. No registration shall be revoked or refused until the registrant has been given an opportunity for a hearing by the commissioner. Any appeal of cancellation at the federal level shall not affect cancellation proceedings with this Commonwealth.

§ 19. Restricted pesticides.

Unless otherwise specified, federally permitted uses of pesticides will be permitted in Virginia.

§ 20. Additional requirements for highly hazardous pesticides.

When the commissioner has evidence that the use of any highly hazardous pesticide will significantly affect the quality of the environment or the health and safety of individual users, nontarget species, or a geographic area, he shall, with the approval of the board, control the distribution, sale and use of the substance by employing one or more of the following regulatory procedures:

1. Registration of sellers and users;
2. Records and reports on quantities sold and used;

3. Sales and use permits;
4. Certification of compliance to approved label precautions; and
5. Approved supervision of use.

§ 21. Categories for commercial applicators.

Certified commercial applicators of pesticides classified for restricted use shall be licensed in one or more of the following categories:

1. Agricultural pest control.

A. Plant.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides in production of agricultural crops (including but not limited to: tobacco, peanuts, cotton, food and feed grains, soybeans and forage vegetables, small fruits, tree fruits, nuts and Christmas trees), grasslands and noncrop agricultural lands.

B. Animal.

This category includes commercial applicators using or supervising the use of restricted-use pesticides on agriculturally related animals including, but not limited to: beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock; and to places on or in which such animals are confined for control of pests directly affecting such animals.

Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicizing themselves as pesticide applicators, or engaged in large-scale use of pesticides, are included in this category.

2. Forest pest control.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides in forests, forest nurseries, and forest seed-producing areas.

3. Ornamental and turf pest control.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides in the maintenance and production of ornamental trees, shrubs, flowers, and turf, including, but not limited to, golf courses, parks, cemeteries, etc.

4. Seed treatment.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides on seeds.

5. Aquatic pest control.

This category includes commercial applicators using, or supervising the use of, any restricted use pesticide in or on standing or running water, for the expressed purpose of controlling pests. (This excludes applicators engaged in public health related activities included in category 8 below.)

6. Right-of-way pest control.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides in the maintenance of public rights-of-way for roads, electric power lines, telephone lines, pipelines, railways, and other similar areas.

7. Industrial, institutional, structural and health-related pest control.

This category includes commercial applicators using, or supervising the use of, restricted-use pesticides in, on, or around food-handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses and grain elevators, and other structures and adjacent or related areas, public or private; for the protection of the structures or controlling nuisance pests or for the protection of stored, processed, or manufactured products. This category does not include commercial applicators using, or supervising the use of, restricted-use pesticides specific to other categories covered by this regulation (i.e. forest pest control, ornamental and turf pest control, right-of-way pest control, etc.)

8. Public health pest control.

This category includes state, federal, or other governmental employees using, or supervising the use of, restricted-use pesticides in public health programs for the management and control of pests having medical and public health significance.

9. Regulatory pest control.

This category includes state, federal, or other governmental employees who use, or supervise the use of, restricted-use pesticides in the control of regulated and nuisance pests.

10. Demonstration and research pest control.

This category includes:

1. Individuals who demonstrate, by actual use or application, the proper use and techniques of application of restricted-use pesticides, or who supervise such demonstration, including such persons as extension specialists, county agents, commercial representatives, or others; and

2. Persons conducting field research with pesticides, including such persons as state, federal, commercial,

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and other persons conducting field research on or using restricted-use pesticides.

[Repealed.]

§ 22. Standards of certification of commercial applicators.

A. Determination of competency.

Competence in the use and handling of pesticides to prevent unreasonable adverse effect on the environment shall be determined on the basis of written examinations administered by the commissioner or his authorized agent and, as appropriate, performance testing based upon standards set forth below. This examination and testing shall include the general standards applicable to all categories, and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified.

All commercial applicators engaged in aerial application of pesticides in any category shall furnish evidence of:

1. Compliance with Title 14, Code of Federal Regulations; Chapter 1, Sub-Chapter G, Part 137, (Agricultural Aircraft Operations).

2. Compliance with § 10, rules and regulations under the Aviation Law of Virginia as issued by the Virginia Department of Aviation, as adopted February, 1981.

B. General standards for all categories of certified commercial applicators:

1. All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems in situations appropriate to the particular category or subcategory of the applicator's certification, and the following areas of competency.

For purposes of these regulations, practical knowledge is the possession of pertinent facts and comprehension, with the ability to use them in dealing with specific problems and situations.

The examination may cover factors such as:

a. Label and labeling comprehension:

(1) The general purpose, format, and terminology of pesticide labels and labeling;

(2) The understanding of directions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) The classification of the product, whether general or restricted; and

(4) The need for use consistent with the label.

b. Safety - factors including:

(1) Pesticide toxicity and hazard to humans and common exposure routes;

(2) Common types and causes of pesticide accidents;

(3) Precautions, including reentry or preharvest intervals where appropriate, necessary to guard against injury to applicators and other individuals in or near treated areas;

(4) Need for and use of required protective clothing and equipment;

(5) Common symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transporting, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.

c. Environment.

The environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil, or other substrate;

(3) Presence of fish, wildlife, and other nontarget organisms and potential accumulation in the food chain;

(4) Drainage patterns.

d. Pest identification:

(1) Common features of pests and the characteristics of the damage they cause;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to identification and methods of control.

e. Pesticide products:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence and animal and plant toxicity of the products;

(4) Hazards and residues associated with use;

(5) Factors which influence effectiveness or lead to problems like resistance to pesticides; and

(6) Dilution procedures.

f. Equipment operation:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance, and calibration.

g. Application techniques:

(1) Procedure used to calculate and apply various formulations of pesticides, solutions, and gases, and a knowledge of which technique to use in a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment.

h. Laws and regulations - General knowledge of:

(1) Applicable state and federal laws and regulations, including responsibilities associated with the supervision of noncertified applicators.

C. Specific standards of competency for each applicable category of commercial applicators:

Commercial applicators in each category described in § 21 shall be particularly qualified with respect to the practical knowledge of standards listed below:

1. Agricultural pest control

a. Plant.

Applicators must demonstrate practical knowledge of the crops grown in their operational areas, and the specific pests of those crops on which they may be using restricted-use pesticides. This competency is important because of the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems caused by the use of restricted-use pesticides in agricultural areas.

b. Animal.

Applicators applying pesticides directly to animals, or to places on or in which animals are confined, must demonstrate practical knowledge of such animals and their associated pests. Practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must demonstrate practical knowledge of the relative hazards associated with formulation, application techniques, age of animals, stress, and extent of treatment.

2. Forest pest control:

Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and forest seed production in the Commonwealth and the pests to be controlled. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. Practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large, frequently include natural aquatic habitats, and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Applicators must demonstrate practical knowledge of proper use of specialized equipment including problems or meteorological factors and adjacent land use.

3. Ornamental and turf pest control:

Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including practical knowledge of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

4. Seed treatment:

Applicators shall demonstrate practical knowledge of types of seeds commonly used in his operating area that require chemical protection against pests, and factors such as required seed coloration and special labeling, carriers, and surface active agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of hazards associated with handling, sorting, mixing, and misuse of treated seed, including the

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introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

5. Aquatic pest control.

Applicators shall demonstrate practical knowledge of the secondary effects of improper application rates, incorrect formulations, and faulty application of restricted use pesticides. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must demonstrate practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited-area application.

6. Right-of-way pest control.

Applicators shall demonstrate practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides in the right-of-way area, and the impact of their application activities in adjacent areas and communities.

7. Industrial, institutional, structural and health related pest control.

Applicators shall demonstrate a practical knowledge of the variety of pests controlled by applicators licensed in this category, including their life cycles, formulations appropriate for their control, and methods of application that avoid contamination of food, damage, and contamination of habitat, and exposure of people and pets. Since human exposure (including babies, children, pregnant women, and elderly people), is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which will lead to a hazardous condition, including continuous exposure in the various situations cited in this category. Because health-related pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions particularly related to this activity.

In order to provide the opportunity for specialization, and, to minimize the need to demonstrate competence in areas of work outside the applicator's particular interest and need, this category is divided into subcategories as elaborated below:

a. General pest control.

Applicator uses or supervises the use of restricted-use pesticides in or around households, churches, offices, warehouses, schools, factories, etc. for the protection of people, clothing, fabrics, paper, pets, and stored foods in private residences, including apartments.

b. Wood-infesting organisms.

Applicator uses or supervises the use of restricted-use pesticides in the prevention and control of wood-infesting organisms including termites, wood-destroying beetles and ants, and fungi for the preservation and protection of fences, materials, utility poles, buildings, and other structures.

c. Food processing pest control.

Applicator uses or supervises the use of restricted-use pesticides in food manufacturing and processing plants and warehouses, food handling establishments, canneries, mills, dairies, restaurants, grain elevators, bakeries, ships, vehicles, meat packing plants, cafeterias, rest homes, and hospital food preparation areas, etc.

d. Fumigation.

Applicator uses or supervises the use of restricted-use pesticides as fumigants in any of the above areas as a pest control practice or as a fruit or tobacco ripening technique. Such products containing methyl bromide, chloropicrin, sulfuryl fluoride, carbon tetrachloride, ethylene dibromide, etc., are considered fumigants.

Applicators may become certified and licensed in one or all established subcategories.

8. Public health pest control.

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and use of such nonchemical control methods as sanitation, waste disposal, and drainage.

9. Regulatory pest control.

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in

suppression and eradication programs. They shall demonstrate practical knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their practical knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the Commonwealth where emergency measures are invoked to control regulated pests, and where individual judgements must be made in new situations.

10. Demonstration and research pest control.

a. Persons demonstrating, by actual use or application, the safe and effective use of pesticides to other applicators and the public, shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate a practical knowledge of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in § 22 A. In addition, they shall meet the specific standards required for categories 1 through 7 of the section as may pertain to their particular activity.

b. Persons conducting field research or method improvement work with restricted-use pesticides shall be expected to know the general standards detailed in subsection A of § 22. In addition, they shall be expected to know the specific standards required for categories 1 through 9 of this section, applicable to their particular activity; or alternatively, to meet the more inclusive requirements listed under "Demonstration".

[Repealed.]

§ 23. [Repealed.]

§ 24. Standards for certification of private applicators.

A. Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below.

B. As a minimum requirement for certification, a private applicator must demonstrate practical knowledge of the pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling, and disposal of the pesticides and containers; supervision of noncertified applicators; and other related legal responsibility necessary to prevent unreasonable adverse effects on the environment. This practical knowledge includes the ability to:

1. Recognize common pests to be controlled, and damage caused by them.

2. Read and understand the label and labeling information - including the common name of the pesticide; pests to be controlled; timing and methods of application; safety precautions; pre-harvest or reentry restrictions; and any specific disposal procedures.

3. Apply pesticides according to label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

4. Recognize local environmental situations that must be considered during application to avoid contamination.

5. Recognize common poisoning symptoms and procedures to follow in case of a pesticide accident.

C. The competence of each private applicator shall be verified by the commissioner through the administration of certification system which ensures that the private applicator is qualified to use the restricted-use pesticides under limitations of applicable state and federal laws and regulations. A certification system shall employ a written or oral testing procedure, or such other equivalent system adopted by the commissioner, subject to the approval of the United States Environmental Protection Agency.

1. In any case where a person is unable to read a label at the time of testing for certification, the commissioner may use a testing procedure previously approved by the United States Environmental Protection Agency which can adequately measure the person's competence. Certification must be related and limited to the use and handling of each individual pesticide for which he desires certification at any time. Therefore, the applicator will be authorized to use only the pesticide(s) for which he has demonstrated competence. A specific procedure is required relating to label comprehension, testing, or demonstration designed to assure his practical knowledge of the following:

a. Understanding the label and labeling information, including those items indicated in § 24 subsection B paragraph 2 above.

b. Sources of advice and guidance necessary for the safe and proper use of each pesticide related to his certification.

D. Certification options available to private applicators are:

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1. General certification:

This option certifies the private applicator as competent to apply any restricted-use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards, and shall be broad enough to test the private applicator's ability to apply general principles to specific problems.

2. Pesticide class certification:

This option certifies the private applicator as competent to apply any restricted-use pesticide in the same class or family. This includes all different pesticide products and all different formulations of a pesticide used for the same purpose. Examples include, but are not limited to: pre-emergent herbicides for vegetable crops; foliar insecticides on corn; rodenticides in fruit orchards; nematocides in fields prior to planting; ground application of fungicides on vegetables; seed treatments for plant diseases, desiccants and defoliants on cotton; and livestock dips for insect control. Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

3. Commodity/crop/site certification:

This option certifies the private applicator as competent to apply any restricted-use pesticide needed for specific crops or sites. This includes any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop, such as cotton, corn, peanuts, apples, tobacco, or wheat; single site class, such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop class, such as forages or small fruits; site class, such as barns or greenhouses; and livestock class, such as poultry.

Competency determination shall reflect the full range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class, and the pests involved.

A private applicator may wish to be certified for a specific site or crop (such as cotton, corn, or beef cattle) or for a site or crop class (such as forage crops, livestock, small grain crops).

4. Single product certification:

This option certifies the private applicator as competent for one or more uses of a single product or related products with the same active ingredient and

with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to apply the pesticide.

5. Single products/single use authorization (emergency program):

This option authorizes the private applicator to make single use applications of a restricted-use product, or other products of the same formulation.

This option may be used only as an emergency provision to accommodate situations, such as an unexpected pest problem, that requires immediate certification of a previously uncertified private applicator, or of one whose particular type of certification does not cover the product needed to deal with the problem.

E. Methods of determining competency:

Private applicators desiring certification may elect any of the following methods except as provided in paragraphs 4 and 5 above.

1. Written examination following lecture-type training.

2. Written examination following independent study.

3. Written examination without prior training.

4. Oral examination and simulated or actual demonstration following independent study. Examination to cover only the independent study materials made available, and will be equivalent in scope to the written examination. To be made available to persons unable to demonstrate the required competence by means of paragraphs 1 through 3 above.

5. Fact finding interview. This method of competency demonstration is available only for emergency certification as provided in subsection C paragraph 5 above.

All determinations of competency shall be made by the commissioner or his authorized agent.

[Repealed.]

§ 25. Standards for application of pesticides classified for restricted use by noncertified applicators:

A. Application of pesticides classified for restricted use may be made by noncertified applicators, provided that the applicator is a competent person acting under the direct supervision (as defined in § 3-1-212.1 of the Code of Virginia) of a certified applicator whose certification permits such application. The certified supervisor shall be available to the noncertified applicator if he is needed. It

shall be the certified applicator's responsibility to keep the noncertified person fully aware of all directions for use and cautions necessary for safe application of any restricted-use pesticide.

B. In addition, all noncertified applicators using any pesticide classified for restricted use, shall have available at the application site and at the loading and mixing site, if different from the application site:

1. Detailed written or printed directions for applying the restricted-use pesticide. Pesticide product label may suffice.
2. Detailed written or printed instructions describing procedures to be followed in order to prevent injury to the applicator or other persons, or unreasonable adverse effects on the environment. Pesticide product label may suffice.
3. Detailed instructions for contacting the certified applicator under whose supervision the noncertified applicator is working (i.e. name, location, telephone number, radio contact, etc.). Such instructions, when followed, shall produce direct communication with the certified applicator.

C. For the purpose of this regulation, "under the direct supervision of" shall include the receipt by the noncertified applicator of verifiable specific and individual job or work assignments and instructions from his certified supervisor.

D. In other situations, as required by the label, the actual physical presence of a certified applicator may be required when application is made by a noncertified applicator.

[Repealed.]

§ 26. [Repealed.]

§ 27. Service container labeling.

A. Containers other than the original registrant's or manufacturer's containers (Article 3, § 3.1-233(2) of the Code of Virginia, notwithstanding) used for the temporary storage or transportation of pesticide concentrates or end-use dilutions, shall bear abbreviated labeling as elaborated below:

PESTICIDE CONCENTRATE

A. If the pesticide to be temporarily stored or transported is a concentrate to be further diluted, the container shall bear a securely attached label with the following information:

1. Product name (brand names from product label);
2. EPA registration number (from product label);

3. Name and percentage of active ingredient(s) from the product label; and

4. Appropriate signal word; i.e., Poison, Danger, Warning, Caution (from product label).

B. The above labeling is required for concentrate service containers, regardless of container type, size, or capacity.

PESTICIDE END-USE DILUTIONS OR END-USE CONCENTRATES

A. If the pesticide to be temporarily stored or transported is to be applied without further dilution, the container shall bear a securely attached label with the following information:

1. Product name (brand name from product label) preceded by the word "Diluted" or "End-Use Concentrate";
2. EPA registration number from concentrate product label;
3. Name of active ingredient(s) and percentage(s) of end-use dilution; and
4. Appropriate signal word: i.e., Poison, Danger, Warning, Caution (from product label).

B. Abbreviated labeling is not required for the following:

1. End-use dilution containers not exceeding three gallons liquid or three pounds dry capacity, when such containers are used as application devices; i.e., hand-held sprayers, dusters, puffers, etc.
2. Containers used by farm supply dealers for the temporary storage or transportation of pesticide concentrate or end-use dilutions, provided that sales invoices or delivery tickets adequately identifying the pesticide(s) accompany each shipment or delivery.
3. On farm concentrate or end-use dilution containers or application equipment used for the temporary storage or transportation of such pesticides for agricultural use.
4. Aircraft-mounted containers used for temporary storage or transportation of concentrate or end-use dilution pesticides, provided that aircraft logs or other documents adequately identifying the pesticide(s) accompany the aircraft.

§ 28. Mixtures.

A. General sale. Regardless of type container mixtures of pesticides with fertilizers or with other pesticides, when offered for general sale to the public shall be registered prior to sale, distribution, or use. In addition, any

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pesticide/fertilizer mixture shall be registered or labeled as required by the Virginia Fertilizer Law. All bulk containers shall bear the registered pesticide product label and a copy of the label shall accompany each shipment or delivery.

B. Custom mixtures. Pesticides may be mixed with fertilizers or with other pesticides without label registration when the pesticide product is duly registered, and when such mixtures are not prohibited by the registered pesticide label.

C. When these mixtures are intended for the production of agricultural commodities, the person making the mixtures shall provide the following written or printed information to the applicator or customer:

1. Brand name(s) and EPA registration no.(s) of pesticide product(s);
2. Percentage(s) by weight of active ingredient(s);
3. Directions for application, use, harvest limitations and cropping restrictions; and
4. Precautionary and warning statements sufficient to ensure proper, safe use, and disposal of the mixture.

D. The registered pesticide product label(s) will suffice. All such labeling shall be subject to approval by the commissioner.



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 P.O. Box 526
 Richmond, Virginia 23204-0526



APPLICATION FOR PESTICIDE PRODUCT REGISTRATION

In accordance with Sections 3.1-249.35 and 3.1-249.40 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for REGISTRATION of the PESTICIDE PRODUCTS listed below.

Register each brand or grade of product separately. Attach one specimen label and one material safety data sheet for each brand or grade listed.

The annual product registration fee is \$125.00 for each brand or grade, with the exception of brands or grades with annual wholesale sales in Virginia of \$5,000 or less. The fee for each excepted product is \$50.00.

Please make check payable to: Treasurer of Virginia. Mail application, attachments, and check to the above address.

Registrations expire on December 31 each year. Unless cancelled or otherwise terminated for cause, registrations are renewed upon receipt of annual fee.

Please print or type the following information:

COMPANY APPEARING ON LABEL	REGISTRATION SUBMITTED BY:
Name: _____	Firm Name: _____
Address: _____	ATTN: _____ (Contact person and title)
City: _____	Address: _____
State: _____ Zip: _____	City: _____
	State: _____ Zip: _____
* Restricted Use Products (RUP) listed below should be so noted by typing an "R" in the space indicated.	Business Phone: _____
	Date: _____
	(Signature of Registrant)

EPA REGIS. NUMBER	PRODUCT NAME AS IT APPEARS ON LABEL	INDICATE IF RUP*	FEE PAID
-------------------	-------------------------------------	------------------	----------

TOTAL FEES REMITTED: \$ _____

VDACS ACCT. 858-02-02631
 VDACS-07208
 6.90

 * FOR DEPARTMENT USE ONLY
 * Date Registration Granted: _____
 * Keyed to Database by: _____

ADDITIONAL INFORMATION AND INSTRUCTIONS

NEW PRODUCTS: New product brands or grades with no sales history in Virginia shall be registered at \$125.00

EXCEPTED BRANDS OR GRADES: Application for registration of excepted brands or grades must be on a separate form, and must be accompanied by clear proof of limited sales.

PRODUCT LABELING: Each product container must bear a label showing all the information required by the Virginia Pesticide Control Act, and regulations adopted thereunder.

REGISTRATION FOR SAME PRODUCT, DIFFERENT LABELS: If a pesticide formulation is manufactured by a firm then packaged and sold under different labels, each with a different distributor firm name and address, then each such labeled product must be registered individually.

SLIGHTLY DIFFERENT PRODUCTS REGISTERED AS SINGLE PESTICIDE: Products which have the same formula, and are manufactured by the same person, the labelings of which contain the same claims, and which bear designations identifying the products as the same pesticide, may be registered as a single pesticide without an additional fee. Example: marine antifoulant paint (with TBT), packaged as separate colors (same label claims, different color on each label), can be registered as one pesticide.

REGISTRATION INSTRUCTIONS: Submit one completed copy of this application form. Enclose a label, with a Material Safety Data Sheet attached, for each product listed in the application. You may include as many product brands or grades as space permits. If additional space is required, please complete an additional application form. Type or print the application clearly in ink.

LISTING PRODUCTS: List the product names alphabetically. List the U.S. EPA registration number, the product name, type an "R" if it is a restricted-use product, and the applicable fee (either \$125 or \$50). An example is shown below.

EPA REGIS. NUMBER	PRODUCT NAME AS IT APPEARS ON LABEL	INDICATE IF RUP*	FEE PAID
1383-85	John Doe's A-1 Fly Bait		\$125
1383-85-1606	John Doe's Weed Killer	R	125

TOTAL FEES REMITTED: \$ 250

PRODUCT SAMPLES AND TEST DATA: By submission of this form, the applicant agrees to provide to this office, upon request, a sample of each product listed and a full description of test results upon which claims are made. Samples and test results are to be sent ONLY WHEN REQUESTED by this office.

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Pesticide Control Board

Title of Regulation: VR 115-04-23. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public Hearing Date: May 10, 1991 - 10.30 a.m.
(See Calendar of Events section for additional information)

Summary:

The proposed Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, sets standards of certification for persons specified by statute who use or supervise the use of pesticides in Virginia (including but not limited to farmers using restricted-use pesticides on their own land and persons who apply pesticides commercially, but excluding persons who use nonrestricted-use pesticides in and around their own homes). This regulation will help to assure that these persons subject to the regulation are adequately trained and competent to use pesticides, an important element in any effort to ensure that pesticides are used in a manner consistent with public health, public safety, and the well-being of the environment.

The proposed regulation includes, among other things, standards for training and testing of registered technicians, a classification of pesticide applicator newly created under the Pesticide Control Act, and for private applicators and commercial applicators, classifications of pesticide applicators that exist at present under VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law.

The proposed regulation sets standards of financial responsibility for those who apply pesticides commercially who are not subject to the present business-license regulation. (Licensed pesticide businesses are required to meet certain measures of financial responsibility under a regulation already in effect.)

The proposed regulation requires those subject to its requirements to report pesticide spills.

The provisions of this regulation supersede § 21, "Categories for commercial applicators"; § 22, "Standards of certification of commercial applicators"; § 24, "Standards for certification of private applicators"; and § 25, "Standards for application of pesticides classified for restricted use by noncertified applicators" of VR 115-04-03, "Rules and Regulations for Enforcement of the Virginia Pesticide Law," which are hereby repealed.

VR 115-04-23. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

PART I. 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. An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 or Article 4 respectively, Chapter 14.1 of Title 3.1, of the Code of Virginia.

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act.

"Adjuvant" means any substance added to a pesticide formulation to enhance the effect of the active ingredient.

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.*

"Board" means the Pesticide Control Board.*

"Board approved training" means a course which includes, at a minimum, study and review of all the material contained in the most current edition used in Virginia of (i) the basic pesticide applicator certification training core manual, and (ii) the certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Chemigation" means the application of any pesticide through an irrigation system.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.1-249.51 et seq.) of Chapter 14.1 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board approved requirements.*

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply

for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. This definition shall also apply to governmental employees who use or supervise the use of pesticides in the performance of their official duties.

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

"Competent person" means a person who, if applying pesticides commercially, has met the requirements for and holds a valid certification as a registered technician.

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

"Drift" means the drifting or movement of pesticide by air currents or diffusion onto property beyond the boundaries of the target area to be treated with pesticide, other than by pesticide overspray. In the absence of evidence of pesticide overspray, the application of pesticide beyond the boundaries of the target area shall be considered to be the result of drift.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, which gas or gases, fumes or vapors, when liberated and used, will destroy vermin, rodents, insects, and other pests, and are usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.*

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.*

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.*

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.*

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.*

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.**

"Nontarget organism" means any living organism, including but not limited to animals, insects, and plants, other than the one against which the pesticide is intended to be applied.

"Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.*

"Pesticide overspray" means the application of pesticide onto property beyond the boundaries of the target area to be treated, by the failure to control the direct flow or application of pesticide from the application equipment, under surrounding conditions of use and application, so as to confine the pesticide to the target area.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

"Reentry interval" as noted on the pesticide label means the amount of time which must elapse between the time of a pesticide application and the time when it is safe for a person to enter the treated area.

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"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.*

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of § 3(d)(1)(C) of the Federal Insecticide Fungicide and Rodenticide Act, as amended.*

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.*

"Synergism" means the interaction of two or more active ingredients in a pesticide formulation which produce a total pesticidal effect that is greater than the sum of the ingredients.

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.**

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.*

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.**

PART II.

CERTIFICATION OF PESTICIDE APPLICATORS IN GENERAL; CLASSES OF PESTICIDE APPLICATOR.

§ 2.1. General conditions of certification.

A. No person who has been convicted of a violation of any federal, state, or local pesticide laws or who has had his certification or pesticide business license revoked within the two-year period immediately prior to application for certification in Virginia may be granted certification as a pesticide applicator in Virginia.

B. No person may be certified as a pesticide applicator by the commissioner or his duly authorized agent unless he:

1. Completes board approved training administered by the department, the Virginia Cooperative Extension Service, or another public agency qualified to administer such training, or by a private business firm qualified to administer such training; and

2. Passes the required board approved written examinations, except as provided in § 2.3 B of this regulation, to be administered by the commissioner or his duly authorized agents at locations authorized by the commissioner. Proof of training shall consist of a statement, signed by a qualified officer of the agency or firm administering the training, that the applicant has completed the training course.

C. Individuals, employees, or representatives of governmental agencies (including but not limited to federal employees under 40 CFR Part 171) who use or supervise the use of pesticides in the performance of their official duties shall meet the requirements of this regulation and be certified as commercial applicators pursuant to this regulation. The certification of such individuals, employees, or representatives shall be valid only when applying or supervising the application of pesticides in the performance of their official duties.

D. Applicants who fail to achieve a passing score on their first attempt at examination are eligible to be reexamined for the same category after 10 days from the date of the first examination. Applicants who fail on the second attempt, or any subsequent attempt, shall wait 30 days from the date of the last examination before being reexamined in the same category. Applicants requesting reexamination shall resubmit a completed application form to the commissioner, and pay the nonrefundable applicator certificate fee again, if not fee exempt.

E. If the commissioner or his duly authorized agent finds the applicant meets the qualifications established by the board to apply pesticides in any of the categories he has applied for, and, if the applicant applying for a certificate to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration, the state Department of Aviation, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the commissioner or his duly authorized agent shall issue a certificate for categories in which the applicant is qualified. The commissioner or his duly authorized agent may limit the certification of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant has limited qualifications. If a certificate is not issued as applied for, the commissioner or his duly authorized agent shall, within 30 days, inform the applicant in writing of the reasons therefor.

F. A commercial or private applicator or registered

technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. The department will issue a duplicate card to the applicator or technician upon payment of the costs of duplication.

§ 2.2. Certification of commercial applicators.

A. Persons who meet at least one of the following requirements shall be eligible to apply for certification as a commercial applicator.

1. Any person who (i) currently holds a valid registered technician certification issued by the commissioner or his duly authorized agent, and (ii) has held this certification for at least one year;
2. Any resident of Virginia who holds a current valid pesticide applicator certification in any state with which Virginia has a reciprocal certification agreement; or
3. Any person whose education, training, or experience in pesticide-related fields provides sufficient practical knowledge of proper pesticide use, in the opinion of the commissioner or his duly authorized agent.

B. Except for a commercial applicator not for hire, no person may be certified as a commercial applicator unless that person first (i) obtains, or is employed by a business that has first obtained, a valid pesticide business license issued pursuant to regulations promulgated by the board; and (ii) complies with the training and certification requirements of the board, unless such person is acting under the direct, on site, supervision of a certified applicator.

C. Any person applying for certification as a commercial applicator shall submit to the commissioner or his duly authorized agent a completed application form accompanied by the fee established by the board. The application form shall contain all the information required by the Act and any other information required by the commissioner.

D. Except as provided in § 8.1 of this regulation for reciprocal certification, applicants for a commercial applicator certificate shall, within 90 days after submitting an application and paying the fee, report to an authorized testing location to take two or more written examinations: (i) an examination to determine the level of basic knowledge, as specified in subsections A and B of § 4.1 of this regulation, required for all categories of pesticide application, and (ii) one or more examinations to determine the specific knowledge as specified in § 4.2 required for the pesticide application category specified in § 3.1 of this regulation.

E. A written examination to determine the level of basic knowledge, as specified in subsection D of this section, shall not be required of persons who apply for

certification in the Marine Antifoulant Paints category; however, an examination to determine the specific knowledge for this category is required.

§ 2.3. Certification of private applicators.

A. Except as provided in 2.3 B of this regulation, each applicant for a private applicator's certificate shall apply to the commissioner by reporting to an authorized testing location and taking an examination for each certification category, specified in § 3.2 of this regulation, applicable to his operation. The completed examination or examinations, when forwarded by the test proctor to the department for scoring, shall serve as the application for certification. The applicant shall submit evidence of having received the necessary board approved training at the time he makes application, and shall also submit any other information required by the commissioner, including a statement of qualifications and proposed operations.

B. A person unable to read and understand a label shall not be certified as a private pesticide applicator; however, the board may grant a waiver of this literacy requirement upon recommendation of a department pesticide investigator, and the appropriate Virginia Cooperative Extension Service agent. Such a recommendation shall be based upon personal knowledge of the individual's competence to apply a restricted use pesticide on his own property. Waivers shall be confined to a specific pesticide to be applied for a specific use.

§ 2.4. Certification of registered technicians.

A. Any person who (i) has applied pesticides under the direct, on site, supervision of a certified commercial pesticide applicator for a minimum of 40 hours during the six-month period previous to applying for certification, and (ii) has received board approved training, shall be eligible to apply for certification as a registered technician.

B. Any person applying for certification as a registered technician shall submit to the commissioner or his duly authorized agent a completed application form, accompanied by the fee specified by the board. The application form shall contain all the information required by the Act and any other information required by the commissioner.

C. Applicants for certification as a registered technician shall, within 90 days after submitting an application and paying the fee, report to an authorized testing location to take a written registered technician examination.

D. Certified commercial applicators may apply to the commissioner or his duly authorized agent for authorization to proctor the written registered technician examination for persons in their employ who are applying for registered technician certification. Authorized proctors may administer the examination, grade the examination, and notify the commissioner or his duly authorized agent of the grade received by the applicant. A commercial

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applicator desiring authorization to proctor the examination shall apply to the commissioner or his duly authorized agent in writing. Any commercial applicator authorized to proctor the examination shall safeguard examination materials and follow testing procedures. Failure to safeguard examination materials or follow testing procedures shall result in revocation of authority to proctor the registered technician examination.

§ 2.5. Exemptions.

The provisions of this regulation shall not apply to the following:

1. Persons conducting research, either in the laboratory or in field plots of 1/4 acre or less in size for each pesticide being tested; and
2. Doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the normal course of their practices. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicizing themselves as pesticide applicators, or engaged in large-scale use of pesticides are subject to the normal certification requirements of the agricultural animal pest control category.
3. Providers of janitorial, cleaning, or sanitizing services if the providers use no pesticides other than nonrestricted use sanitizers, disinfectants, and germicides.

PART III. CATEGORIES OF PESTICIDE APPLICATOR CERTIFICATION.

§ 3.1. Categories for commercial applicator certification.

A. Applicants for certification as a commercial applicator, in order to recommend, apply or supervise the application of pesticides, shall be certified in one or more of the following categories or subcategories, and may use pesticides commercially only in those categories (or, if not certified fully in the category, in the appropriate subcategory) in which they are certified.

1. Agricultural pest control.

a. **Agricultural plant pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides (i) in production of agricultural crops including, but not limited to, tobacco, peanuts, cotton, food and feed grains, soybeans and forage, vegetables, small fruits, tree fruits, nuts and Christmas trees; and (ii) on grasslands and noncrop agricultural lands.

b. **Agricultural animal pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides on

agriculturally related animals including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock; and to places on or in which such animals are confined for control of pests directly affecting such animals.

c. **Fumigation of soil and agricultural products.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity and the application of pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

d. **Chemigation.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

2. **Forest pest control.** This category is for commercial applicator applicants who will be using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

3. Ornamental and turf pest control.

a. **Ornamental pest control - outdoor.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in the maintenance and production of ornamental trees, shrubs, and flowers out-of-doors.

b. **Ornamental pest control - indoor.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in the maintenance and production of ornamental plants indoors.

c. **Turf pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.

4. **Seed treatment.** This category is for commercial applicator applicants who will be using or supervising the use of pesticides on seeds.

5. Aquatic pest control.

a. **Aquatic pest control - general.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests (this excludes applicators engaged in public health related activities included

in subdivision 8 of this subsection, "public health pest control").

b. Marine antifoulant paints. This subcategory is for commercial applicator applicants who will be using or supervising the use of marine antifoulant paints containing tributyltin or other pesticides.

6. Right-of-way pest control. This category is for commercial applicator applicants who will be using or supervising the use of pesticides in the maintenance of public rights-of-way for roads, electric power lines, telephone lines, pipelines, and railways; and in the maintenance of fence lines, structural perimeters or other similar areas.

7. Industrial, institutional, structural, and health-related pest control.

a. General pest control (excluding fumigation). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control household type pests, and other pests that inhabit or infest structures, stored products, and residential food preparation areas. This category shall not include control of wood-destroying pests.

b. Wood-destroying pest control (excluding fumigation). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control organisms that destroy structures made of wood.

c. Food processing pest control (excluding fumigation). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control pests capable of infesting or contaminating foods and foodstuffs at any stage of processing in food processing facilities.

d. Fumigation. This subcategory is for commercial applicator applicants who will be using or supervising the use of fumigant-type pesticides.

e. Vertebrate pest control (excluding structural invaders). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control vertebrate pest animals.

8. Public health pest control. This category is for commercial applicator applicants who will be using or supervising the use of pesticides for the management and control of pests having medical and public health significance. Included in this category are federal, state, and local governmental employees involved in public health pest control programs.

9. Regulatory pest control. This category is for federal,

state, and local governmental employee applicants who will be using or supervising the use of pesticides in the control of regulated pests.

10. Demonstration and research pest control. This category is for commercial applicator applicants, to include federal, state, and local governmental employees, who will be demonstrating the proper use and techniques of application of pesticides, or who will be supervising such demonstration. It also includes applicants who will be conducting field pesticide research on plots greater than 1/4 acre for each pesticide being tested. Applicants who will be conducting research shall, in addition to being certified in this category, become certified in one or more of the categories, listed in this section, appropriate to the type of pesticide application being performed.

11. Aerial pesticide application. This category is for commercial applicator applicants who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft. In addition to certification in this category, certification is also required in one or more of the categories listed in this section appropriate to the type of pesticide application being performed.

12. Wood preservation and wood product treatment. This category is for commercial applicator applicants who will be using or supervising the use of pesticides at treating plants and sawmills for preservative treatment of wood and wood products by pressure, dipping, soaking, and diffusion processes to protect them from damage by insects, fungi, marine borers, and weather.

13. Pesticide storage and distribution (excluding application). This category is for commercial applicator applicants who only store, display, and distribute pesticides in the operation of a pesticide sales, distribution, or warehousing business. Certification in this category does not permit the application of restricted use pesticides except under the direct supervision of a commercial applicator authorized by this regulation to supervise the application of the restricted use pesticide.

B. A commercial applicator certified in one category and seeking initial certification in one or more additional categories shall meet the certification requirements of each of the new categories in which he desires certification. Except as provided in § 5.3 of this regulation, a previously certified commercial applicator shall not be required to be examined in knowledge of the general standards listed in § 4.1 B if, in the process of receiving certification in another category, the applicator took and passed an examination covering these standards.

§ 3.2. Categories for private applicator certification.

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Applicants for certification as a private applicator, in order to apply or supervise application of restricted use pesticides, shall be certified in one or more of the following categories:

1. Agricultural pest control. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides (i) in production of agricultural crops, including, but not limited to, tobacco, peanuts, cotton, feed grains, soybeans, forage crops, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands; (ii) on animals including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock; (iii) in places on or in which animals are confined; and (iv) for the management or control of vertebrate pests of agricultural crops and livestock animals.

2. Nursery/greenhouse pest control. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides to control pests in tree, shrub, ornamental plant, and flower nurseries; and in greenhouses used for propagating and growing plants including, but not limited to, vegetables, shrubs, house plants, and flowers.

3. Fumigation of soil and agricultural products. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides for soil fumigation in production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

4. Chemigation. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides through an irrigation system. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

5. Aerial pesticide application. This category is for private applicator applicants who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft in the production, or in the support of production, of agricultural crops. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

6. Limited certificate - single product/single use. This

category is for private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case by case basis.

7. Single product certification. This category is for private applicator applicants who are seeking authorization to apply a single identified restricted use product, or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.

PART IV. CERTIFICATION STANDARDS FOR PESTICIDE APPLICATORS.

§ 4.1. Certification standards for private and commercial applicator.

A. Determination of knowledge and qualifications.

Knowledge and qualifications in the use and handling of pesticides to prevent unreasonable adverse effects on man and the environment shall be determined on the basis of written examinations administered by the commissioner or his duly authorized agents and, as appropriate, performance testing based upon standards set forth below. This examination and testing shall include the general standards applicable to all categories, and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All private and commercial applicators engaged in aerial application of pesticides in any category shall furnish evidence of compliance with applicable regulations enforced by the Federal Aviation Administration and by the Virginia Department of Aviation.

B. General standards for all categories of private and commercial applicator.

All applicants for certification as a private or commercial applicator shall demonstrate knowledge of the principles and practices of pest control and safe use of pesticides as prescribed herein. Knowledge shall be determined by the administration of examinations appropriate to the particular category or subcategory of certification desired by the applicant.

1. Label and labeling comprehension.

a. The concept that labels and labeling are legal documents and the directions they contain shall be followed;

b. The general purpose, format, and terminology of pesticide labels and labeling;

- c. Understanding directions for use, storage and disposal; precautionary statements; significance of the signal words "caution," "warning," and "danger"; and other information including terms and symbols commonly appearing on pesticide labels;
 - d. Understanding the meanings of product or brand name, common name, and chemical name;
 - e. Understanding the meaning of the term "restricted use" pesticide;
 - f. Understanding the need for use consistent with the label; and
 - g. Understanding the requirements for personal protection and avoiding environmental risk.
2. Safety factors.
- a. Recognition and understanding of the acute toxicity of pesticides to humans and their common exposure routes; concept of risk as a function of toxicity and exposure to a pesticide;
 - b. Common types and causes of pesticide accidents;
 - c. Selection, use, and care of personal clothing and protective equipment; personal hygiene required;
 - d. Recognition of common symptoms of pesticide poisoning; practical treatment, including first aid, and other procedures to be followed in the case of a pesticide accident;
 - e. Reentry intervals and restrictions, and worker protection in or near pesticide-treated areas; and
 - f. Proper identification, storage, transporting, handling, mixing procedures, and disposal methods for excess pesticides, pesticide waste, and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.
3. Environmental risk. The environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
- a. Weather and other climatic conditions affecting pesticide applications;
 - b. Types of terrain, soil, or other substrata;
 - c. Drift, runoff as a function of drainage patterns, and aquatic contamination;
 - d. Presence of fish, wildlife, and other nontarget organisms and potential accumulation in the food chain;
 - e. Potential for groundwater contamination;
 - f. The presence of endangered and protected species;
 - g. Pesticide transportation, mixing, handling, application, and disposal including container disposal; and
 - h. Spill prevention and control.
4. Pest identification and biology.
- a. Common features of pests and the characteristics of the damage they cause;
 - b. Recognition of pests and the physical characteristics that distinguish one pest from another; and
 - c. Pest development and biology as it may be relevant to identification and methods of control; stage of life cycle when pests are most vulnerable.
5. Pesticide products and chemical control.
- a. Types of pesticides, formulations and adjuvants; characteristics, advantages, disadvantages, and main uses of typical formulations; factors in choosing the correct pesticide and method of application;
 - b. Compatibility, synergism, persistence, and animal and plant toxicity of the products;
 - c. Hazards and residues associated with use;
 - d. Factors that influence efficacy of a pesticide;
 - e. Concept of pesticide resistance; and
 - f. Pest control strategies.
6. Equipment selection and maintenance.
- a. Types of equipment and advantages and limitations of each type;
 - b. Factors in choosing the most appropriate equipment for applicable situations, including chemigation; and
 - c. Proper care and maintenance, calibration and use.
7. Calibration and calculation.
- a. Dilution of concentrate formulations in accordance with label directions;
 - b. Calculation of area or volume to be treated;

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- c. Factors involved in calibration of equipment; and
- d. Adjusting nozzle output by changing pressure, speed of applicator, or nozzle tip.

8. Application techniques.

- a. Procedure used to calculate and apply various formulations of pesticide solutions and gases, and a knowledge of which techniques to use in a given situation;
- b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
- c. Prevention of drift and pesticide contamination of the environment.

9. Applicator related laws and regulations.

- a. Applicable state and federal laws and regulations;
- b. Responsibility of certified applicator to use a pesticide in a manner consistent with its label or labeling, and to supervise any noncertified employee who is assigned to use a pesticide; and
- c. Applicator liability and penalties.

C. General standards for registered technician.

All applicants for certification as a registered technician shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on problems and situations in the following areas:

- 1. Federal and Commonwealth of Virginia pesticide laws and regulations;
- 2. How to read and interpret a pesticide label;
- 3. Handling of accidents and incidents;
- 4. Proper methods of storing, mixing/loading, transporting, handling, applying, and disposing of pesticides;
- 5. Safety and health, including proper use of personal protective equipment; and
- 6. Potential adverse effects caused by various climatic or environmental conditions, such as drift from the target area, pesticide run-off, groundwater contamination, and hazard to endangered species.

§ 4.2. Specific standards of knowledge and qualifications for each category of commercial applicator. All applicants for certification as a commercial applicator are required to demonstrate skills and knowledge specific to their

desired certification category, in addition to the general pesticide knowledge standards set forth in subsection B of § 4.1 of this regulation. The specific standards of knowledge set forth below are applicable to the commercial applicator categories and subcategories of certification set forth in § 3.1 of this regulation.

1. Agricultural pest control.

a. Agricultural plant pest control. Applicants shall demonstrate knowledge of (i) crops grown in the Commonwealth, and the specific pests of those crops on which applicators may be using pesticides; (ii) soil and water problems, preharvest intervals, reentry intervals, phytotoxicity; and (iii) potential for environmental contamination, injury to nontarget organisms, and community problems caused by the use of pesticides in agricultural areas.

b. Agricultural animal pest control. Applicants who will be applying pesticides directly to animals, or to places on or in which animals are confined, shall demonstrate knowledge of (i) such animals and their associated pests; (ii) specific pesticide toxicity and residue potential; and (iii) the potential hazards associated with formulation, application techniques, age of animals, stress on the animals, and extent of treatment.

c. Fumigation of soil and agricultural products. Applicants shall demonstrate knowledge of the (i) use of personal protective clothing and equipment for fumigation; (ii) general safety procedures, including posting, reentry, and aeration; (iii) accident procedures; and (iv) application techniques appropriate to various situations.

d. Chemigation. Applicants shall demonstrate knowledge of the (i) equipment associated with applying pesticides through an irrigation system, including calibration techniques and use of anti-back flow/check valve to prevent contamination of water supplies; (ii) labeling requirements of products registered for chemigation, including posting requirements; and (iii) appropriate use of personal protective equipment associated with this type of application.

2. Forest pest control. Applicants shall demonstrate knowledge of the (i) types of forests, forest nurseries, and seed orchards in the Commonwealth and the pests to be controlled; (ii) cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications; (iii) nontarget organisms present and their vulnerability to the pesticides to be applied; (iv) control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife; and (v) proper use of specialized equipment, especially as it may relate to weather and adjacent land use.

3. Ornamental and turf pest control.

a. **Ornamental pest control - outdoor.** Applicants shall demonstrate knowledge of (i) pesticide problems associated with the outdoor production and maintenance of ornamental trees, shrubs, and other landscape plants; (ii) potential phytotoxicity; (iii) problems associated with drift, and pesticide persistence beyond the intended period of pest control; and (iv) methods of application that shall minimize hazards to humans, pets, and other domestic animals.

b. **Ornamental pest control - indoor.** Applicants shall demonstrate knowledge of (i) pesticide problems associated with the production and maintenance of ornamental plants indoors; (ii) potential phytotoxicity; (iii) problems associated with drift in an indoor environment; and (iv) application methods that minimize hazards to humans and pets.

c. **Turf pest control.** Applicants shall demonstrate knowledge of (i) pesticide problems associated with the production and maintenance of turfgrass in landscapes, golf courses, residential lawns, cemeteries, parks, sod farms, and other areas; (ii) problems associated with drift and leaching from the target area; (iii) potential phytotoxicity; and (iv) methods of application that minimize hazards to humans, pets, and domestic animals.

4. **Seed treatment.** Applicants shall demonstrate knowledge of the (i) types of seeds commonly used in the Commonwealth that require chemical protection against pests, (ii) required seed coloration and special labeling, (iii) carriers and surface active agents that influence pesticide adherence to seeds, and that may affect germination, (iv) hazards associated with handling, sorting, mixing, and misuse of treated seed, including the introduction of treated seed into food and feed channels, and (v) proper disposal of unused treated seeds.

5. Aquatic pest control.

a. **Aquatic pest control - general.** Applicants shall demonstrate knowledge of the (i) secondary effects of improper application rates, incorrect formulations, and faulty application of pesticides; (ii) various water use situations and the potential of downstream effects; (iii) potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms that may be present in aquatic environments; and (iv) principles of limited area application.

b. **Marine antifoulant paints.** Applicants shall demonstrate knowledge of secondary effects of improper application rates, incorrect formulations, and faulty application of pesticides incorporated into paints.

6. **Right-of-way pest control.** Applicants shall demonstrate knowledge of (i) a wide variety of environments, including aquatic, in which right-of-way pesticide applications are made; (ii) problems with runoff, drift, and excessive foliage destruction, as well as the ability to recognize target organisms; (iii) the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area; and (iv) the impact of their application activities in adjacent areas and communities.

7. **Industrial, institutional, structural and health related pest control.** In general, applicants shall demonstrate knowledge of the (i) variety of pests in this category including pest life cycles, formulations appropriate for control, and methods of application that avoid contamination of food and habitat, and exposure of people and pets; (ii) specific factors which may lead to a hazardous condition for humans and pets, including continuous exposure in the various situations cited in this category; and (iii) relevant environmental conditions.

Category 7 is divided into subcategories as set forth below. Applicants who will specialize in one or more subcategories shall demonstrate knowledge in those subcategories.

a. **General pest control (excluding fumigation).** Applicants shall demonstrate knowledge of (i) household pests, including, but not limited to cockroaches, ants, silverfish, spiders, food- and fabric-destroying insects, rats, bats, and other pests that invade or infest structures, stored products, and residential food preparation areas; (ii) conditions conducive to pest infestations and selection of appropriate control procedures for each situation; and (iii) hazards involved with pesticide usage.

b. **Wood-destroying pest control (excluding fumigation).** Applicants shall demonstrate knowledge of (i) organisms that destroy structures made of wood including but not limited to beetles, termites, and fungi, and conditions conducive to infestation; (ii) selection, calibration, and use of appropriate control procedures including rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood, such as poles, pilings, and railroad cross ties; and (iii) hazards involved in the handling and use of these pesticides and the appropriate application equipment to be used.

c. **Food processing pest control (excluding fumigation).** Applicants shall demonstrate knowledge of (i) the pests capable of infesting or contaminating foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operations including but not limited to flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores,

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rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; (ii) conditions conducive to infestations and selection of appropriate control procedures, other than fumigation, for each situation; and (iii) hazards associated with pesticides in food manufacturing and processing.

d. Fumigation. Applicants shall demonstrate knowledge of the (i) conditions requiring the application of fumigants, and selection of the most appropriate fumigation methods to use; (ii) equipment used in fumigation, including, but not limited to application, monitoring, testing, calculating, and personal protective devices; (iii) release, distribution, and maintenance of the correct fumigant concentrations for the product being used and structure being fumigated under differing conditions; and (iv) hazards involved in the use of fumigants.

e. Vertebrate pest control (excluding structural invaders). Applicants shall demonstrate knowledge of (i) vertebrate pest animals, including birds, and of the conditions conducive to infestation and damage; (ii) federal and state laws and regulations governing the control of migratory birds, and protected or endangered animals; (iii) methods of control of pest animals, and effects of such control on nontarget organisms; (iv) other potential effects on the environment, and (v) hazards involved with pesticide usage.

8. Public health pest control. Applicants shall demonstrate knowledge of (i) disease vectors and appropriate control programs; (ii) various environments where public health pest control programs are conducted, including, but not limited to, streams, wetlands, forested areas, municipal garbage dumps, vacant lots, and buildings; (iii) the importance and use of nonchemical control methods including, but not limited to, sanitation, proper waste disposal, and drainage; and (iv) all regulatory requirements, precautions and warnings for reentry into areas treated with pesticides.

9. Regulatory pest control. Applicants shall demonstrate knowledge of (i) regulated pests, applicable laws relating to quarantine and other regulation of pests; (ii) potential impact on the environment of pesticides used in programs for the suppression and eradication of regulated pests; and (iii) factors that influence the introduction, spread, and population dynamics of regulated pests.

10. Demonstration and research pest control. Applicants who will be demonstrating, by actual use or application, the safe and effective use of pesticides to other applicators and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide uses. The applicant shall possess knowledge of (i) problems, pests, and pest population

levels occurring in each demonstration situation; (ii) pesticide-organism interactions and the importance of integrating pesticide use with other control methods; (iii) all the requirements set forth in subsections A and B of § 2.4 of this regulation; and (iv) all the specific standards required for categories 1 through 8, 11 and 12 of this section as the standards relate to the applicant's particular intended activities.

11. Aerial pesticide application. Applicants shall demonstrate knowledge of (i) equipment calibration and maintenance; (ii) how to avoid problems associated with aerial application, such as drift and injury to nontarget organisms; and (iii) the appropriate type of aerial application to be performed through their additional certification in one or more of the categories listed in this section.

12. Wood preservation and wood product treatment. Applicants shall demonstrate knowledge of (i) the conditions for which preservative treatment of wood is used; (ii) the health and environmental hazards associated with wood treating procedures; (iii) the need for informing purchasers of precautions for handling, use, and disposal of treated wood products; and (iv) all applicable treating and testing equipment.

13. Pesticide storage and distribution (excluding application). This category is designated for the certification of those persons who store, display, and distribute pesticides in the operation of a pesticide sales, distribution, or warehousing business. Persons certified in this category shall not be permitted to apply restricted use pesticides, except under the direct supervision of a commercial applicator authorized by this regulation to supervise the application of the restricted use pesticide. Applicants for certification in this category shall demonstrate knowledge of (i) the safe and proper handling of pesticides; (ii) potential environmental hazards; (iii) containment of spills; and (iv) the disposal of pesticide-related hazardous waste.

D. The standards listed under subsection C of this section shall not apply for purposes of these regulations to persons conducting laboratory research involving pesticides.

§ 4.3. Specific standards of knowledge and qualifications for certification of private applicators.

All applicants for certification as a private applicator shall demonstrate knowledge of the use of restricted use pesticides specific to their desired certification. These specific standards are in addition to the general standards set forth in subsection B of § 4.1 of this regulation. The specific standards of knowledge set forth below are applicable to categories of certification specified in § 3.2 of this regulation.

1. Agricultural pest control. Applicants shall demonstrate knowledge of (i) crops grown in the Commonwealth and the specific pests of those crops

on which they may be using restricted use pesticides; (ii) relevant soil and water problems; (iii) preharvest and reentry intervals; (iv) phytotoxicity, potential injury to nontarget organisms, and potential for environmental contamination; (v) animals, their associated pests, and specific pesticide toxicity and residue potential; (vi) the potential hazards associated with such factors as formulation, application technique, age of animals, stress on animals, and extent of treatment; (vii) vertebrate pest animals, including birds, and the conditions conducive to infestation and damage; (viii) methods of control of pest animals, effects of such control on nontarget organisms and other potential effects on the environment; and (ix) the hazards involved with pesticide usage.

2. Nursery/greenhouse pest control. Applicants shall demonstrate knowledge of (i) commodities grown in nurseries and greenhouses, such as trees, vegetables, shrubs, plantings, and flowers; (ii) the pests associated with these commodities; (iii) phytotoxicity, drift, reentry intervals, preharvest intervals; and (iv) the use of protective equipment.

3. Fumigation of soil and agricultural products. Applicants shall demonstrate knowledge of (i) the use of personal protective equipment for fumigation and of general safety procedures, including posting, reentry, and aeration; and (ii) safety precautions and application techniques appropriate to various situations and conditions under which fumigants are applied.

4. Chemigation. Applicants shall demonstrate knowledge of (i) equipment associated with chemigation, including calibration techniques and use of anti-back flow/check valve to prevent contamination of water supplies; (ii) labeling requirements of products registered for chemigation, including posting requirements; and (iii) the appropriate use of personal protective equipment associated with this type of application.

5. Aerial pesticide application. Applicants shall demonstrate knowledge of (i) the agricultural crops grown, as well as grasslands and noncrop agricultural lands, and the specific pests of those crops on which they may be using pesticides; (ii) soil and water problems; (iii) equipment calibration and maintenance; (iv) preharvest intervals; (v) reentry intervals; (vi) phytotoxicity; (vii) prevention of drift; and (viii) potential for environmental contamination and injury to nontarget organisms.

6. Limited certificate - single product/single use. This category is intended for limited use under special or emergency circumstances as identified by the board where there exists a need to use a single identified restricted use product for a single designated purpose. The applicant shall demonstrate practical knowledge of (i) the safe handling and application of the identified product; and (ii) the environmental risks relative to its

usage.

7. Single product certification. This category is intended for use under special or emergency circumstances as identified by the board. The applicant shall demonstrate practical knowledge of (i) the safe handling and application of the identified product or products; and (ii) the environmental risks relative to usage.

PART V. RECERTIFICATION; RENEWAL OF CERTIFICATES.

§ 5.1. Recertification.

A. Any private or commercial pesticide applicator, or registered technician, who desires to renew his certification shall do so biennially under the category or subcategory for which he is certified, subject to presentation of proof of completion of a board approved recertification course. Recertification of commercial applicators and registered technicians is also contingent upon receipt of the required annual certificate fee.

B. To obtain recertification each applicator shall either (i) furnish satisfactory evidence of completion of educational courses, programs, or seminars, approved by the board, relating to the applicator's certification, and submit a completed application for recertification form; or (ii) be reexamined in basic pesticide safety as well as in the categories desired for recertification.

C. The maximum accumulation of recertification credit which can be earned from attending board approved recertification courses is four years.

D. Upon the expiration of his certification, an applicator's certificate shall become invalid.

E. The commissioner or his duly authorized agent shall, within 30 days after receiving the application for recertification, inform the applicant in writing of his decision regarding recertification.

§ 5.2. Renewal of certificates.

A. All pesticide applicators and registered technicians who desire to renew their certificates shall do so by submitting an application for renewal within the period of time, and accompanied by the appropriate fee, if any, prescribed in regulations promulgated by the board governing fees.

B. Commercial pesticide applicator and registered technician certificates shall be renewed annually.

C. Private pesticide applicator certificates shall be renewed biennially.

D. Any pesticide applicator or registered technician who fails to renew an expired certificate within 60 days after

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its expiration, and who desires to reinstate the certificate, shall be reexamined.

§ 5.3. Reexamination.

A. Reexamination or special examination shall be required by the board of any commercial applicator or registered technician under the following circumstances:

1. The commercial applicator's or registered technician's certificate has been suspended, revoked, or modified pursuant to Part V of this regulation;
2. Significant technological developments have occurred requiring additional knowledge relating to the category or subcategory for which the applicator or registered technician has been certified;
3. Additional standards established by the EPA require reexamination or special examination;
4. The applicator or registered technician wishes to apply for a different category of certification; or
5. Regulations of the board require reexamination or special examination.

PART VI.

SUSPENSION AND REVOCATION OF CERTIFICATES; DENIAL OF CERTIFICATION

§ 6.1. Summary suspension by commissioner.

A. The commissioner may summarily suspend the certificate of any person without a hearing if he finds there is a substantial danger, or threat of a substantial danger, to the public health, safety, or the environment which warrants the summary suspension. The commissioner or his duly authorized agent shall institute proceedings for a hearing simultaneously with the summary suspension, and the hearing shall be scheduled for a date within a reasonable time after the date of the summary suspension.

B. No person whose certificate has been suspended may engage in the activity for which he has been certified.

§ 6.2. Revocation of a certificate by the board

Any of the violative acts listed under § 3.1-249.63 C of the Code of Virginia shall constitute grounds for revocation by the board of a certificate.

§ 6.3. Denial of certification by the commissioner.

A. No person may be granted certification until he (i) submits the information required on the application form; (ii) completes the necessary board approved training; (iii) passes the necessary written examination or examinations; and (iv) complies in every other respect with all the relevant certification requirements required by this

regulation.

B. No applicant for certification may engage in the activity for which he is requesting such certification until the certification shall have been issued by the commissioner.

PART VII.

REPORTING OF PESTICIDE ACCIDENTS, INCIDENTS, OR LOSS.

§ 7.1. Reporting of pesticide accidents and incidents.

A. A commercial or private applicator or registered technician shall report to the department any pesticide accident or incident in which he is involved that constitutes a threat to any person, to public health or safety, or to the environment. The accident or incident shall be reported whether or not a restricted use pesticide is involved. The applicator shall make the initial notification to the department's Office of Pesticide Management by telephone within 48 hours after the accident or incident occurrence. The applicator shall be responsible for preparing a full written report of the accident or incident which shall be due in the Office of Pesticide Management within 10 days after the initial notification.

B. In cases where the accident or incident involves a discharge or spillage of pesticide, the applicator shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity. If this is so, the applicator shall also notify the National Response Center at 1-800-424-8802. If, for any reason, the applicator is unable to reach the department for assistance, he shall call the National Response Center. In no way does this notification release the applicator from notifying other state agencies if such a discharge is a reportable quantity.

PART VIII.

RECIPROCAL AGREEMENT.

§ 8.1. Issuance of a certificate on a reciprocal basis.

A. A person who is certified either in another state by meeting the examination requirements of that state, or by a federal agency, substantially in accordance with these regulations, may make written application to the commissioner or his duly authorized agent for issuance of a certificate on a reciprocal basis without examination, in accordance with § 3.1-249.57 of the Code of Virginia. Along with his written application, an applicant shall either (i) present an original certificate issued by the state of origin or issued by a federal agency, or (ii) request that the state of origin or federal agency send an attested copy of the applicant's certification directly to the commissioner or his duly authorized agent. The applicant shall either include a document granting power of attorney to a resident of Virginia to receive process or provide proof that the applicant has appointed a registered agent under

the laws of the commonwealth. Reciprocal certification shall not be granted based on reciprocal certification issued in another state.

B. Any certificate issued on a reciprocal basis may be suspended in the same manner and on the same grounds as a Virginia certificate pursuant to the provisions of Chapter 14.1 (§ 3.1-249.27 et seq.) of Title 3.1 of the Code of Virginia and this regulation. A certificate issued on a reciprocal basis may also be suspended if the nonresident's original certificate or federal certification is suspended or revoked.

PART IX. RECORD KEEPING.

§ 9.1. General record keeping requirements for commercial applicators not for hire.

A. Commercial applicators not for hire, being exempt from the pesticide business license requirement of the board and the record keeping requirements under this license, are required to maintain pesticide application records as prescribed in this regulation. These records shall be maintained by the commercial applicator not for hire for a period of two years.

B. Records governed by this regulation shall, upon written request, be made available for inspection by the commissioner or his duly authorized agent during normal business hours. Records not readily available shall be submitted to the commissioner or his duly authorized agent within 72 hours if so requested in writing.

C. Persons possessing records governed by this part shall fully comply with the requirements contained in § 8 of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations adopted pursuant thereto.

§ 9.2. Specific record keeping requirements for commercial applicators not for hire.

A. Commercial applicators not for hire shall maintain a record of each restricted use pesticide applied. Each record shall contain the:

1. Name, address, and telephone number of the customer, and address or location, if different, of the site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month, and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;

6. Brand name or common product name of pesticide used;

7. EPA registration number;

8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and

9. Type of application equipment used.

PART X. EVIDENCE OF FINANCIAL RESPONSIBILITY.

§ 10.1. Evidence of financial responsibility required of commercial applicators not for hire.

A. Commercial applicators not for hire, being exempt from the business license requirement of the board and the financial responsibility required under this license, shall furnish evidence of financial responsibility, consisting either of (i) a surety bond to the benefit of the board from a person authorized to do business in Virginia; (ii) a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant; or (iii) a plan of self-insurance which meets the requirements set forth below and is approved by the board.

B. If the evidence of financial responsibility consists of a surety bond, the bond shall be in an amount specified in subsection E of this section, and shall cover liability arising out of handling, storage, application, use or misuse, or disposal of any pesticide; the bond shall also cover liability relating to completed operations.

C. If the evidence of financial responsibility consists of a liability insurance policy, the following conditions shall be met:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; the policy shall also cover liability relating to completed operations;
2. The policy shall be in an amount specified in subsection E of this section; and
3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

D. If the evidence of financial responsibility consists of a plan of self-insurance, the following conditions shall be met:

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1. The self-insurer shall submit a written proposal of self-insurance to the board for approval. The proposal shall include a master self-insurance and security agreement and a balance sheet and income statement which reflects the actual financial condition of the applicant, if self-employed, or his employer's business, if not, as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be certified by a certified public accountant.

2. The self-insurer shall post collateral with the board in the amount of at least \$400,000. The collateral shall consist of the following: negotiable instruments of the United States government; escrow deposits established for the sole purpose of providing security for self-insurance purposes; irrevocable letters of credit; or other security approved upon petition to the board.

3. If the self-insurer is unable to fulfill his obligations under the Act, he may petition the board to release the collateral posted. If such a withdrawal is necessary, the self-insurer shall replace the security within 72 hours after the time of withdrawal in order to retain his certificate as a self-insurer.

4. A certificate of self-insurance, to be issued by the board, shall be renewed annually following appropriate review by the board. If his financial responsibility furnished no longer complies with this section of the regulation, the self-insurer shall immediately provide other evidence of financial responsibility that complies with the requirements of this regulation.

E. The amount of financial responsibility required by this section shall be a minimum of (i) \$200,000 for property damage, subject to a \$1,000 deductible provision in the case of persons holding liability insurance policies, and \$200,000 for personal injury; or (ii) a combined single limit of \$400,000 with a \$1,000 deductible. The board may require additional evidence of financial responsibility based upon annual gross revenue of the applicant, if self-employed, or his employer's business, if not, and an assessment of the risks of the applicant or his employer's business to persons, property, and the environment. The applicator shall maintain at least the minimum coverage at all times, and shall notify the board at least 10 days prior to any reduction or cancellation of such financial responsibility by the surety or insurer. If the deductible of an applicator is greater than \$1,000, evidence of financial responsibility shall be furnished to the board to satisfy the difference between the applicator's deductible and the \$1,000 deductible. This evidence may consist of a financial statement or a personal bond.



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
P.O. Box 526
Richmond, Virginia 23204-0526



APPLICATION FOR RECIPROCAL PESTICIDE APPLICATOR CERTIFICATE

In accordance with Section 3.1-249.57 of the Virginia Pesticide Control Act, application is hereby made for CERTIFICATION as a COMMERCIAL PESTICIDE APPLICATOR under the Reciprocal Agreement between the Commonwealth of Virginia and the State of _____.

Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty. Certificate fee is \$35.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Please type or print the following information:

CERTIFICATION APPLIED FOR IN THESE CATEGORIES (see reverse):

CAT.NO.	TITLE	CAT.NO.	TITLE

SOCIAL SECURITY NUMBER: _____

NAME OF APPLICANT: _____
(Last) (First) (M.I.)

STREET/RFD: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

GOVERNMENT EMPLOYEE? YES NO

EMPLOYED BY (COMPANY NAME OR GOVT. AGENCY): _____

BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____

NAME/TITLE OF SUPERVISOR: _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage in Virginia.

(Signature of Applicant) DATE: _____

AMOUNT TO REMIT: \$35.00
VDACS ACCT. 856-02-02656
* FOR DEPARTMENTAL USE ONLY
* ComAppl Certificate No.: _____
* Date of Issue: _____
* Saved to Database By: _____
* Saved to Database By: _____



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
P.O. Box 526
Richmond, Virginia 23204-0526



APPLICATION FOR COMMERCIAL PESTICIDE APPLICATOR CERTIFICATE

In accordance with Section 3.1-249.52 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for CERTIFICATION as a COMMERCIAL PESTICIDE APPLICATOR in Virginia.

Certificate fee is \$35.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty.

Please type or print the following information:

CERTIFICATION APPLIED FOR IN THESE CATEGORIES (see reverse):

CAT.NO.	TITLE	CAT.NO.	TITLE

NAME OF APPLICANT: _____
(Last) (First) (M.I.)

SOCIAL SECURITY NUMBER: _____

STREET/RFD: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

GOVERNMENT EMPLOYEE? YES NO

EMPLOYED BY (COMPANY NAME OR GOVT. AGENCY): _____

BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____

NAME/TITLE OF SUPERVISOR: _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage in Virginia.

(Signature of Applicant) DATE: _____

AMOUNT TO REMIT: \$35.00
VDACS ACCT. 856-02-02656
* FOR DEPARTMENTAL USE ONLY
* ComAppl Certificate No.: _____
* Date of Issue: _____
* Saved to Database By: _____
* Saved to Database By: _____

(see reverse for applicator categories)



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
P.O. Box 526
Richmond, Virginia 23204-0526



VIRGINIA
APPLICATION FOR RECERTIFICATION

APPLICATION FOR COMMERCIAL PESTICIDE REGISTERED TECHNICIAN CERTIFICATE

In accordance with Section 3.1-249.52 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for CERTIFICATION as a REGISTERED TECHNICIAN. Registered Technicians may apply general use pesticides unsupervised, and restricted-use pesticides under the supervision of a Certified Commercial Applicator.

Certificate fee is \$15.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty.

Please type or print the following information:

NAME OF APPLICANT: _____
(Last) (First) (M.I.)
SOCIAL SECURITY NUMBER: _____
STREET/RFD: _____ CITY: _____
COUNTY: _____ STATE: _____ ZIP CODE: _____
GOVERNMENT EMPLOYEE? YES NO
EMPLOYED BY (COMPANY NAME OR GOVT. AGENCY): _____
BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____
NAME OF CERT. COMMERCIAL APPLICATOR SUPERVISOR: _____ CERT. NUMBER: _____
APPROVED TRAINING RECEIVED (LIST CATEGORIES): _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage.

I certify that this applicant has successfully completed a training course, approved by the Pesticide Control Board, specific to the pesticide application requirements of his/her job.

(Signature of Applicant) (Signature of supervisor)
DATE: _____ DATE: _____

* FOR DEPARTMENTAL USE ONLY * AMOUNT TO REMIT: \$15.00
* RecTech Certificate No.: _____ * VDACS ACCT. 856-02-02437
* Date of Issue: _____ *
* Keyed to Database BY: _____ * VDACS-07212

I, _____, holder of Pesticide Applicator Certificate # _____, hereby certify that I have attended and participated in the following approved training program and make application for recertification credit as a Commercial Pesticide Applicator in Category #(s) _____.

(Category Description(s)) _____

This Course has been approved for recertification credit in Category(s) _____

Course Approval Number(s) _____
Name of Training Program: _____
Date(s) of Attendance: _____

**If the address on your Certificate is not correct, please provide the correct address below:

This Certification of attendance and participation is witnessed by my signature hereto affixed and I further acknowledge that the use of fraud or misrepresentation in making of this Application for Recertification is a violation of Section 3.1249.8.C of the Virginia Pesticide Control Act.

(Signature of Applicator) (Signature of Principal Instructor)

Complete and return to:
Office of Pesticide Management
Virginia Department of Agriculture & Consumer Services
P. O. Box 1163
Richmond, VA 23209

12-Oct.-89



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Division of Product and Industry Regulation
Office of Pesticide Management
P. O. Box 1163, Room 408, Richmond, VA 23209

POWER OF ATTORNEY

The following is for use by non-Virginia residents in designating an agent upon whom service of process (summons to court, etc.) may be had in the event of any suit against such non-resident person.

Please complete and file in duplicate. Enclose with this form, a check for \$3.00 made payable to the SECRETARY OF THE COMMONWEALTH and mail to the above address.

KNOWN ALL MEN BY THESE PRESENTS: THAT (applicant's name and address) residing at

does hereby make, constitute, and appoint of (name and address of agent) OR

does hereby make, constitute and appoint the SECRETARY OF THE

COMMONWEALTH OF VIRGINIA, and his successor or successors in office to be the true and lawful agent and attorney-in-fact upon whom all legal processes against said non-resident person may be served;

IN WITNESS WHEREOF the said person has executed and subscribed this Power of Attorney in duplicate this day of, 19

ATTEST: (Applicant's Signature) (Witness's Signature) State of City (or County) of

I, a Notary Public in and for the State and city or county aforesaid, hereby certify that (Applicant's Name) and (Witness's Name) whose names are signed to the

foregoing Power of Attorney, have acknowledged the same before me in my city or county aforesaid. Given under my hand and official seal this day of, 19

Notary Public:

My Commission Expires:

Affix Official Seal

CERTIFICATE OF INSURANCE

To the Virginia Department of Agriculture and Consumer Services:

I hereby certify that Policy # provides coverage, in the form of a Comprehensive General Liability Policy, for liability that may result from the handling, storage, application, use or misuse, or disposal of any pesticide, and for liability relating to completed operations.

\$ for property damage, and \$ for personal injury; OR \$ combined single limit for property damage and personal injury. \$ deductible amount (see reverse for deductible requirements)

Exclusions (please specify):

This policy has been issued to:

(Name of Insured) (Address)

(Trading As, or D.B.A.) (Address)

Policy term: Effective date: Expiration date:

In the event of cancellation, the insurer agrees to advise the VDACS Office of Pesticide Management, by written notice, at least 10 days prior to the effective date of cancellation.

(Insurance Company Providing Coverage)

(Agency Issuing Policy) (Company Seal or Stamp)

(Street) (City) (State) (Zip)

X (Signature - Authorized Representative) (Date of Certificate)

For acceptance by the Virginia Department of Agriculture and Consumer Services, this form must be properly completed, validated and signed by the issuing insurance agency.

Return to: Office of Pesticide Management Virginia Department of Agriculture and Consumer Services P.O. Box 1163 Richmond, Virginia 23209

EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED OF
A LICENSED PESTICIDE BUSINESS

Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility consisting either of (1) a surety bond to the benefit of the Pesticide Control Board; (2) a liability insurance policy, or certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticides by the applicant; or (3) a plan of self-insurance which meets the requirements of the Pesticide Control Board. Such financial responsibility need not apply to damages or injury to agricultural crops, plants or property being worked upon by the applicant.

Minimum Insurance Requirements

\$200,000 for personal injury, and \$200,000 for property damage subject to a \$1,000 deductible; OR

\$400,000 combined single limit, with a \$1,000 deductible.

If the deductible is greater than \$1,000, further evidence of financial responsibility must be furnished to satisfy the difference between the deductible in the policy and the maximum allowed deductible. This evidence may consist of a financial statement (certified by a CPA) or a personal bond.

The business licensee shall maintain at least the minimum coverage at all times during the license period, and shall provide a current certificate of insurance to the Office of Pesticide Management at each insurance renewal date.

Note - This certificate is for use only in providing proof of liability insurance coverage.

Proposed Regulations

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-40-04. Regulations Governing the Virginia Medical Scholarship Program.

Statutory Authority: § 32.1-122.6 B of the Code of Virginia.

Public Hearing Date: April 25, 1991 - 9 a.m.
(See Calendar of Events section for additional information)

Summary:

The amendments set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia medical scholarships to medical students; the general terms and conditions applicable to the obligation of each recipient of a medical scholarship to practice medicine in a medically underserved area of Virginia, as identified by the Board of Health by regulation, or to practice medicine in a designated state facility as defined by regulation; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Medical Scholarship Program. These regulations and the Regulations for Determining Medically Underserved Areas supersede and replace Definitions of "Practice of Family Medicine" and "Areas of Need" under State Medical Scholarship Program which were adopted and became effective December 1, 1979.

VR 355-04-04. Regulations Governing the Virginia Medical Scholarship Program.

PART I. GENERAL INFORMATION.

§ 1.1. Authority

Title 32.1, Chapter 6, § 32.1-122.6 B of the Code of Virginia requires the State Board of Health, after consultation with the Medical College of Virginia, the University of Virginia School of Medicine, and the Medical College of Hampton Roads, to promulgate regulations to administer the Virginia Medical Scholarship Program.

§ 1.2. Purpose.

These regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia medical scholarships to medical students; the general terms and conditions applicable to the obligation of each recipient of a medical scholarship to practice medicine in a medically underserved area of Virginia, as identified by the Board of Health by regulation, or to practice medicine in a designated state facility as defined in these regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Medical Scholarship Program. These regulations and the Regulations for Determining Virginia Medically Underserved Areas supersede and

replace Definitions of "Practice of Family Medicine" and "Areas of Need" under State Medical Scholarship Program which were adopted by the Board of Health and became effective December 1, 1979.

§ 1.3. Administration.

The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from these regulations shall be considered on an individual basis by the board in regular session.

§ 1.4. Applicability.

These regulations shall apply to all recipients who begin fulfillment of their scholarship obligation on July 1, 1990, or later; provided that approval given by the Commissioner prior to the effective date of these regulations shall remain in full force and effect.

§ 1.5. Effective date.

These regulations shall be effective on June 1, 1991.

PART II. DEFINITIONS.

§ 2.1. Definitions.

Unless the context clearly indicates a contrary interpretation, the words and terms used in these regulations shall have the following meanings:

"Accredited internship" means a graduate medical education program of one year duration accredited by the Liaison Committee on Graduate Medical Education.

"Accredited residency" means a graduate medical education program in family practice medicine, general internal medicine, pediatric medicine or obstetrics and gynecology accredited by the Liaison Committee on Graduate Medical Education.

"Approved by the medical school from which the graduate matriculated" means that medical school affirms that the graduate has accepted placement in an accredited residency or internship at a hospital or institution located in Virginia, or affirms that such placement has been accepted in a program not located in Virginia due to such placement through the match.

"Board" or "Board of Health" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Designated state facility" means a facility operated by the Virginia Departments of Corrections, Youth and Family Services, or Mental Health, Mental Retardation and Substance Abuse Services.

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"Interest at the prevailing bank rate for unsecured debt" means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

"The match" means the National Resident Matching Program, a nationwide system by which medical school graduates are placed in graduate medical education programs by mutual agreement.

"Medically underserved area" means a geographic area in Virginia designated by the State Board of Health in accordance with the rules and regulations for the identification of medically underserved areas.

"Practice" means the practice of medicine by a recipient in one of the designated primary care specialties in an area determined to be fulfillment of the recipient's scholarship obligation.

"Primary care" means the specialties of family practice medicine, general internal medicine, pediatric medicine, or obstetrics and gynecology.

"Recipient" or "scholarship recipient" means an eligible medical student or graduate medical student who enters into a contract with the commissioner and receives one or more scholarship awards via the Virginia Medical Scholarship Program.

"Virginia medical scholarship" means an award of \$10,000 made to a student enrolled in a Virginia medical school or to a graduate student of a Virginia medical school pursuing the first year of graduate training at a hospital or institution approved by the Virginia medical school that the graduate attended as a medical student and for which the medical student or graduate medical student entered a contractual obligation to repay.

"Virginia medical school" means the Eastern Virginia Medical School of the Medical College of Hampton Roads, or the Medical College of Virginia of the Virginia Commonwealth University, or the School of Medicine of the University of Virginia.

PART III. SCHOLARSHIP AWARDS.

§ 3.1. Eligible applicants.

Any currently enrolled student in full-time attendance at a Virginia medical school or a graduate of such school who has accepted placement in, but not entered the first year of an accredited internship or accredited residency approved by the medical school from which the graduate matriculated, shall be eligible for the Virginia medical scholarship. Preference for the scholarship award shall be given to: residents of the Commonwealth over nonresidents; residents from medically underserved areas of Virginia as determined by the Board of Health in accordance with the

provisions of its regulations for that purpose; and students or first year graduates from racial minorities. Additionally, preference shall be given to first-year graduates serving in approved internships or primary care residencies in Virginia over first-year graduates in approved out-of-state internships or residencies.

§ 3.2. Scholarship amount.

A Virginia medical scholarship award shall be \$10,000 for each academic year and shall be awarded to the recipient upon or following the recipient's execution of a contract with the commissioner for scholarship repayment.

§ 3.3. Distribution of scholarships.

Annually, by May 1 of each calendar year, the commissioner shall inform the deans of the Virginia medical schools of the number of medical school scholarships that are available for the schools' medical students during the next academic year. The annual number of medical scholarships available for award at each Virginia medical school shall be uniformly distributed among the schools, and shall be equal, and shall be based upon funds appropriated by the Virginia General Assembly. The deans of the respective Virginia medical schools shall annually nominate qualified students or first-year residents, in accordance with the criteria for preference enumerated in § 3.1 of these regulations, to receive scholarships. The number of nominees submitted to the commissioner at this time will not exceed the number of scholarships that are available for each medical school. The State Health Commissioner shall award scholarships to the nominees of the deans at the Virginia medical schools in accordance with the number of scholarships available for each medical school. Any scholarships that have not been awarded following the initial annual distribution among the medical schools shall be available for redistribution to qualified students in any of the medical schools at the discretion of an awards committee consisting of the commissioner, who shall serve as chairman and ex officio member without vote, and the deans of the medical schools or their designees. The awards committee shall convene for this purpose only when the scholarships available to one or more of the medical school exceed the number of qualified nominees by the dean(s). A scholarship shall be awarded to qualified students based upon majority vote of the awards committee. Individual scholarship recipients may be nominated for and receive a maximum of five scholarships.

PART IV. CONTRACTS.

§ 4.1. Contract provisions.

Prior to the award of a scholarship, the commissioner shall enter into a contract with the recipient. The contract shall:

1. Provide that the recipient will pursue the medical

course of the school nominating the recipient for the award until the recipient's graduation or will pursue the recipient's first year of primary care graduate training in an accredited internship or residency program approved by the school nominating the recipient for the award and, upon completing a term not to exceed three* years as an intern or resident in an approved program, will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for a period of years equal to the number of annual scholarships received. At any time prior to entering practice, the scholarship recipient shall be allowed to select a future practice location from the listing of medically underserved areas maintained by the board, and the recipient shall be allowed to fulfill the scholarship repayment obligation in the preselected medically underserved area. However, after making an initial selection of a medically underserved area in which to practice, the recipient may not alter the decision until the recipient is fully prepared to enter practice, at which time the recipient must choose from the current list of medically underserved areas maintained by the board or the preselected medically underserved area.

2. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine in a medically underserved area will provide services to persons who are unable to pay for the service and will participate in all government sponsored insurance programs designed to assure access of covered persons to medical care services.

3. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine on a full-time basis in a medically underserved area will maintain office hours convenient for the population of the area to have access to the recipient's services.

4. Provide that the recipient will not voluntarily obligate himself for more than the minimum period of military service required of physicians by the laws of the United States;

5. Provide that upon completion of the minimum period of military service, the recipient will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for the period of years equal to the number of scholarships received.

6. Provide for termination of the contract by the recipient while the recipient is enrolled in medical school, upon the recipient's notice and immediate repayment to the Commonwealth of the total amount of the scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by

the recipient.

7. Provide that if the recipient fails to maintain satisfactory academic progress, the recipient may, upon certification of the commissioner, be relieved of the contract obligation to engage in full-time primary care practice in a medically underserved area, or in a designated state facility, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

8. Provide that if the recipient becomes permanently disabled so as not to be able to engage in primary care practice, the recipient may, upon certification of the commissioner, be relieved of the obligation under the contract to engage in full-time primary care practice in an underserved area, or in a designated state facility, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest on such amount computed at 8.0% per annum from the date of receipt of scholarship funds. For recipients completing part of the practice obligation prior to becoming permanently disabled, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship award multiplied by the number of years practiced. Unusual hardship may be reviewed for variance by the board on a case-by-case basis.

9. Provide that if the recipient expires prior to entering primary care practice or subsequent to entering practice in a designated medically underserved area or state facility, the scholarship indebtedness shall be forgiven.

10. Provide that any recipient of a scholarship, who fails or refuses to fulfill the obligation to practice primary care medicine in a medically underserved area or designated state facility for a period of years equal to the number of annual scholarships received, shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest on the tripled obligation amount at the prevailing bank rate of interest for similar amounts of unsecured debt.

11. Provide that for a recipient who fulfills part of the contractual obligation by practicing primary care medicine in a medically underserved area, or in a designated state facility, for one or more years, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship multiplied by the number of years practiced in the appropriate area or facility, and the remainder tripled as provided in subdivision 10 of this section. Partial years of practice may be credited beyond the one year minimum practice requirement.

§ 4.2. Repayment.

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A. Unless repayment is forgiven as specified in subdivision 9 of § 4.1 or by special variance as provided in subdivisions 6, 7 and 8 of § 4.1 all scholarships shall be repaid to the Commonwealth, either by the recipient's practice of primary care medicine in a medically underserved area, or designated state facility, or through cash payments as specified in subdivisions 10 and 11 of § 4.1.

B. Repayment by practice.

It is the intent of the Virginia Medical Scholarship Program that recipients repay their scholarship obligation by practice. Each recipient electing to repay by practice shall notify the commissioner in writing of his proposed practice location not more than 30 days after completing his approved residency program. After receiving written approval of his practice location from the commissioner, the recipient shall begin his approved practice not more than 90 days after completing his primary care residency program. A recipient will receive one year of credit toward fulfillment of his scholarship obligation for each 12 months of full-time (minimum of 40 hours per week) continuous primary care practice. Absences from the practice in excess of seven weeks per 12-month practice period for maternity leave, illness, vacation, or any other purpose shall not be credited toward repayment and will extend the recipient's total obligation by the number of weeks of excess absence. Any recipient who partially completes a scholarship obligation by practicing for one year or longer in an approved practice will be required to fulfill the remainder of the scholarship obligation by cash repayment in accordance with subsection C of this section. Credit for partial years of service, beyond the one-year minimum practice requirement, will be applied toward fulfillment of the scholarship obligation.

C. Cash repayment.

Cash repayment by recipients who terminate their contracts prior to the completion of training shall be made in accordance with subdivisions 6 and 7 of § 4.1 and by recipients who become disabled before fulfilling the practice obligation in accordance with subdivision 8 of § 4.1. Cash repayment by recipients who otherwise fail or refuse to fulfill their practice obligation shall be made in accordance with subdivisions 10 and 11 of § 4.1.

D. Cash repayment amount.

The full amount to be repaid by a recipient who fails or refuses to fulfill the practice obligation shall be determined in the following manner: the annual amount of the scholarship for the year the recipient obtained the scholarship multiplied by three, plus interest (current bank rate of interest on a similar amount of unsecured debt) calculated from the date of receipt of funds by the recipient until the scholarship is fully repaid. Repeat the above calculation for each scholarship that the recipient obtained and add the sums of the calculations to determine the total amount due to be repaid to the

Commonwealth.

E. Cash repayment schedule.

Any scholarship to be repaid in cash payments due to the recipient's failure to enter into an approved practice shall be repaid within two years of the completion of the recipient's graduate training. Any scholarship to be repaid in cash payments due after partial repayment by practice shall be paid within two years of the recipient's departure from his approved practice. Failure of any recipient to complete a schedule of cash repayments within the required two years or to enter the practice of primary care medicine in a medically underserved area, or designated state facility, shall be cause for the commissioner to refer the matter to the Attorney General for disposition. The Attorney General shall take such action as the Attorney General deems proper to ensure reimbursement to the Commonwealth. If court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs and reasonable attorney's fees incurred by the Commonwealth in such collection.

PART V. RECORDS AND REPORTING.

§ 5.1. Reporting requirements.

Reporting requirements of medical schools and scholarship recipients are as follows:

1. Each Virginia medical school shall maintain accurate records of the status of scholarship recipients until the recipients graduate from medical school and during any postgraduate year that a scholarship is awarded. The medical schools shall provide a report listing the status of each recipient annually to the commissioner.

2. Each scholarship recipient shall, during the post-scholarship award period as an intern or resident, report his location and status to the commissioner and to the medical school where he received scholarship award(s) annually, during the month of July. In addition, each scholarship recipient shall, during his period of obligated practice, report his status annually to the commissioner. The report shall include sufficient information as requested by the commissioner to verify compliance with the practice requirements of the scholarship contract. Additionally, any scholarship recipient shall immediately inform the commissioner of any change in his practice location or change in his practice status. For purposes of this provision, notification within 10 days of any such change shall be considered immediate notification.

* NOTE: A variance (of one additional year) to the maximum three-year residency limitation will be available to medical scholarship recipients who choose to complete an obstetrics/gynecology residency program upon their

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request.

* * * * *

Title of Regulation: VR 355-40-05. Rules and Regulations for the Identification of Medically Underserved Areas in Virginia.

Statutory Authority: § 32.1-122.5 of the Code of Virginia.

Public Hearing Date: April 25, 1991 - 1 p.m.
(See Calendar of Events section for additional information)

Summary:

The regulations set forth the criteria for the identification of areas within the Commonwealth that are in need of additional primary health care services and for the designation of areas so identified as medically underserved areas. Primary care physicians who have received scholarships under the Virginia Medical Scholarship Program are contractually obligated to practice primary care medicine in medically underserved areas of the Commonwealth designated by the board.

VR 355-04-05. Rules and Regulations for the Identification of Medically Underserved Areas in Virginia.

**PART I.
GENERAL INFORMATION.**

§ 1.1. Authority.

In accordance with the provisions of § 32.1-122.5 of the Code of Virginia, the State Board of Health is required to establish criteria for determining medically underserved areas within the Commonwealth. The criteria are required to be quantifiable measures, sensitive to the unique characteristics of urban and rural jurisdictions.

§ 1.2. Purpose.

The purpose of identifying medically underserved areas within the Commonwealth is to establish geographic areas in need of additional primary health care services. These areas may be selected by trained primary care physicians and other health professionals as practice sites in fulfillment of obligations that the physicians and other health professionals accepted in return for medical training and scholarship grant assistance. Each year of practice in a medically underserved area satisfies the repayment requirement of a year of scholarship support from the Virginia Medical Scholarship Program. Additionally, these medically underserved areas will be eligible locations for practicing primary care physicians and other health professionals participating in the state or federal physician loan repayment programs. Further, these medically underserved areas may become eligible for assistance, state or federal, to establish primary care

medical centers.

**PART II.
DESIGNATING MEDICALLY UNDERSERVED AREAS.**

§ 2.1. Criteria for determining medically underserved areas.

The following five criteria, as available, and as indicated, shall be used to evaluate and identify medically underserved areas throughout the Commonwealth of Virginia:

1. Percentage of population with income at or below 100% of the federal poverty level. The source for these data shall be the most recent available publication of the Bureau of the Census of the U.S. Department of Commerce.

2. Percentage of population that is 65 years of age or older. The source for these data shall be the Economic Services Division of the Virginia Employment Commission.

3. The primary care physician to population ratio. The source for these data shall be the Department of Family Practice of the Medical College of Virginia of Virginia Commonwealth University.

4. The four-year aggregate infant mortality rate. The source for these data shall be the Center of Health Statistics of the Virginia Department of Health.

5. The most recent annual civilian unemployment rate. The source for these data shall be Information Services Division of the Virginia Employment Commission.

§ 2.2. Application of the criteria.

A. Determining medically underserved cities and counties.

The criteria enumerated in § 2.1 shall be used to construct a numerical index by which the relative degree of medical underservice shall be calculated for each city and county within the Commonwealth. Observations for each of the five criteria will be listed for each Virginia city and county. An interval scale will be used to assign a particular value to each observation. This will be done for each of the five criteria. Each interval scale will consist of four ranges or outcomes of observations. The ranges will be numerically equal. The four ranges will be labeled as Level 1, Level 2, Level 3, and Level 4. The numerical difference between the ranges will be established beginning with the Level 2 range.

The Level 2 range shall have the statewide average for each respective criterion, except the population to primary care physician ratio, as its upper limit. The Level 2 upper limit for the primary care physician to population ratio is

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established by dividing the difference between the Level 4 upper limit for this criterion and the Level 1 upper limit by two. Each observation which is equal to or less than the Level 2 upper limit, but greater than the Level 1 upper limit, will be assigned a numerical value of two.

The Level 1 range shall have an upper limit which is the quotient of the statewide average divided by two. For the ratio of population to primary care physician criterion, the upper limit of Level 1 shall be the ratio 2500:1 as recommended by the American Academy of Family Physicians. Each observation that is equal to or less than the Level 1 upper limit will be assigned a numerical value of one.

The Level 3 range shall have an upper limit that is equal to the sum of the upper limit of the Level 1 range and the upper limit of the Level 2 range. For the ratio of population to primary care physician criterion, the upper limit of level 3 shall be established at 3500:1, the federal standard for designating health manpower shortage areas. Each observation that is equal to or less than the Level 3 upper limit will be assigned a numerical value of three.

The Level 4 range will include any observation greater than the upper limit of Level 3 range. Each observation in the Level 4 range will be assigned a numerical value of four.

The values for each of the ranges of the five criteria will be summed for each Virginia city and county. Each Virginia city and county will have an assigned value of five or greater, to a maximum of 20. A statewide average value will be determined by summing the total city and county values and dividing by the number of cities and counties. Any city or county assigned a value that is greater than the statewide average value shall be considered medically underserved. The application of criteria for determining medically underserved cities and counties shall be performed annually and published by the board.

B. Determining medically underserved areas within cities and counties.

Geographic subsections of cities or counties may be designated as medically underserved areas when the entire city or county is not eligible if the subsection has: (i) a population to primary care physician ratio equal to or greater than 3500:1; and (ii) a population whose rate of poverty is greater than the statewide average poverty rate; and (iii) a minimum population of 3,500 persons residing in a contiguous, identifiable, geographic area. The board shall from time to time, on petition of any person, or as a result of its own decision, apply criteria for determining medically underserved subareas of cities and counties. Once determined to be medically underserved, any subarea of a city or county shall appear on the next list of medically underserved areas published by the board. Areas which qualify as medically underserved areas under § 2.2 A and that are within Standard Metropolitan Areas

as defined by the U. S. Department of Commerce, must also qualify under this section for purposes of placement of health professionals.

CONTRACT BETWEEN VIRGINIA BOARD OF HEALTH AND
MEDICAL STUDENT APPLICANTS AGREEING TO PROVIDE PRIMARY
MEDICAL CARE SERVICES IN MEDICALLY UNDERSERVED AREAS
IN THE COMMONWEALTH OF VIRGINIA UPON COMPLETION OF TRAINING

THIS CONTRACT IS EFFECTIVE AS OF THE DATE OF EXECUTION BY THE
STATE HEALTH COMMISSIONER (HEREAFTER "COMMISSIONER"), AS AGENT FOR
THE VIRGINIA BOARD OF HEALTH, AND JOHN DOE (HEREAFTER "STUDENT
RECIPIENT"), AND CONCLUDES ONLY UPON FULL PERFORMANCE OF ALL
AGREEMENTS HEREIN BY BOTH PARTIES.

WITNESSETH:

WHEREAS, conditional scholarships have been authorized
pursuant to § 32.1-122.6 of the Code of Virginia to be awarded to
medical students in good standing who intend to enter one of the
primary care specialties of family practice medicine, general
internal medicine, pediatrics, or obstetrics/gynecology leading to
the provision of such primary care services in medically
underserved areas of the Commonwealth of Virginia; and

WHEREAS, the General Assembly has allocated funds for eighteen
such scholarships in the amount of \$10,000 each per annum through
the Appropriations Act for the biennium 1991-1992; and

WHEREAS, the student recipient named herein has been nominated
by Virginia Commonwealth University, the University of Virginia,
or the Medical College of Hampton Roads as an eligible applicant
and determined qualified consistent with the requirements specified
in the Regulations Governing the Virginia Medical Scholarship
Program promulgated by the Virginia Board of Health, incorporated
by reference into this contract as Attachment A; and

WHEREAS, the award of any scholarship requires the student
recipient to sign a contract of agreement to pursue the medical
course of the school nominating him or her until graduation or to
pursue his or her first year of postgraduate training at an
approved hospital or institution, and, upon completing a term not
to exceed a designated number of years in accordance with the
above-cited Regulations, to intend to begin promptly and to engage
continuously thereafter in one of the designated primary care
specialties in an underserved area in the Commonwealth of Virginia
for a period of one year for each one-year scholarship received;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The student recipient named above does affirm that he/she
has been nominated as eligible by _____ and qualifies
for a scholarship pursuant to § 32.1-122.6 of the Code of Virginia
and the Regulations attached hereto as Attachment A, and that
he/she understands and agrees to the terms and conditions of
primary practice in a medically underserved area and to the terms
and conditions of default set forth in this contract.

2. The student recipient shall permit _____ to
disclose to the Commissioner all information regarding his/her
academic standing that is required to monitor compliance with the
terms and conditions stated below and shall report to the
Commissioner and to _____ annually each July his/her
current mailing address and other information as requested or as
necessary to enable appraisal of compliance with this contract.

3. The student recipient agrees that, immediately following receipt of his license for the individual practice of medicine on completion of the training stated above, he/she shall practice his/her primary care specialty of family practice, pediatrics, general internal medicine, or obstetrics/gynecology as a primary care practitioner in his/her area of expertise continuously for a period of twelve consecutive months for this one-year award in a community designated by the Virginia Board of Health as medically underserved or as an employee of a facility operated by one of the following: the Virginia Department of Corrections, the Virginia Department of Youth Services, or the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. The one-year practice obligation agreed to by execution of this contract shall take place consecutively with each or any other such one-year practice obligations, and shall not include or be substituted by either military service or public health service.

4. In consideration therefor, the Commonwealth of Virginia shall pay to _____, student recipient, the sum of \$10,000 within forty-five days of execution of this contract, as payment in full for the Commonwealth's obligation under this contract to provide a nontransferable scholarship to be used solely for the purpose of defraying the cost of the student recipient's attendance at _____ for the academic year 1991-1991,

TERMS AND CONDITIONS OF PRIMARY CARE PRACTICE

5. Performance of primary care service under this contract

means the clinical practice of family medicine, general internal medicine, pediatric medicine, or obstetrics and gynecology.

6. The selection of a medically underserved area as a practice location may be made by the student recipient at any time prior to entering practice. This selection shall not be altered until the student recipient is fully prepared to enter practice, at which time his/her final selection of practice location shall be made from the current list of medically underserved areas and the practice location must receive the written approval of the Commissioner.

7. Performance of practice for one year shall be determined by commencement of practice no later than ninety days following completion of the residency training period, as defined by the Board in the above-cited Regulations, and shall require practicing a minimum of forty hours per week for a minimum of forty-five weeks during the succeeding twelve month period and practicing one additional week for each week (or fraction thereof) of absence from practice in excess of seven weeks during the twelve-month period. The one-year obligation shall be deemed satisfied upon verified documentation to and acceptance by the Commissioner of completion of the service in the approved location.

If the approved practice location is in a medically underserved area, it shall be required that office hours be maintained that are convenient for the population of the area, that service be provided to persons who are covered by Medicare, Medicaid, or any other government health care reimbursement

program, and to persons unable to pay and for whom no reimbursement exists.

TERMS AND CONDITIONS OF DEFAULT AND FORFEITURE OF SCHOLARSHIP

8. The student recipient shall be considered in default of his obligations under the terms and conditions of this contract for any of the following causes: student recipient placed on academic or other probation; student recipient suspended by or expelled from _____; student recipient's voluntary withdrawal from _____; failure of student recipient to obtain or retain a license to practice medicine in the Commonwealth of Virginia; failure of student recipient to fulfill the required duration, location, or type of medical practice requirements; voluntary military service by student recipient beyond that required by United States law; permanent disability or death of student recipient.

9. Default prior to completion of one year of education shall result in repayment of the full amount of the scholarship, plus interest. Interest shall be charged at the same percentage charged by banks for similar amounts of unsecured debt on the date the default occurs. The dollar amount of interest shall be calculated on the sum of the scholarship and shall be added to the scholarship amount. The lump sum shall be due and payable on the date of default. The Commissioner may allow the debt to be amortized in increments over a period not to exceed two calendar years from the date of default.

10. Default subsequent to completion of one year of education

and prior to fulfillment of the practice requirement shall result in forfeiture of the full amount of the scholarship, plus penalty and interest, and shall obligate the student recipient to repay, for each unfulfilled week of practice, 1.9 percent of the scholarship, plus penalty and interest. The penalty shall be twice the dollar amount of that portion of the scholarship to be repaid. Interest shall be charged at the same percentage charged by Virginia banks for similar amounts of unsecured debt on the date of default. The dollar amount of interest shall be calculated on the sum of the scholarship plus penalty. The lump sum shall be due and payable on the date of default. The Commissioner may allow the debt to be amortized in increments over a period not to exceed two calendar years from the date of default.

11. The student recipient shall be deemed to be in default if _____ notifies the Commissioner that he/she has been placed on probation for academic or other reasons. The Commissioner may, in his discretion, relieve the student recipient of all obligations contained in this contract, and require repayment of the full amount of the scholarship, plus 8 percent interest. The lump sum is due and payable on the date of default. The Commissioner may allow the debt to be amortized in increments over a period not to exceed two calendar years from the date of default.

12. The student recipient shall be deemed to be in default if, as a result of permanent disability, he/she becomes unable to complete the year of medical education for which the scholarship

was accepted or becomes unable to practice primary care medicine. The Commissioner may, in his discretion, relieve the student recipient of all obligations contained in this contract and require repayment of the full amount of the scholarship, plus 8 percent interest. The lump sum shall be due and payable on the date of default. The Commissioner may allow the debt to be amortized in increments over a period not to exceed two calendar years from the date of default. Upon a finding of unusual hardship by the Virginia Board of Health, a variance from this obligation may be permitted on a review of the individual circumstances.

13. In the case of default owing to the death of the student recipient prior to completion of the one year of medical education for which this scholarship is awarded, or prior to fulfillment of his/her practice obligation, the Commissioner may waive all obligations contained in this contract.

14. The student recipient shall be liable for court costs and reasonable attorney's fees incurred by the Commonwealth in connection with the recovery of scholarship funds and penalties and interest.

This contract constitutes the entire agreement between the Commissioner acting for the Virginia Board of Health and student recipient. Nothing in this contract shall be construed as authority for either party to limit or to make commitments beyond the express scope of the provisions contained herein.

STATE HEALTH COMMISSIONER

C. M. G. Buttery, M.D., M.P.H.

Date

STUDENT RECIPIENT

Date

Approved as to form

Assistant Attorney General

Proposed Regulations

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
(BOARD OF)**

Title of Regulation: VR 460-03-4.1921. Methods and Standards for Other Types of Services: Obstetric and Pediatric Maximum Payments.

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

Public Hearing Date: N/A – Written comments may be submitted until April 26, 1991.

(See Calendar of Events section for additional information)

Summary:

Section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) mandated that states include the amounts of payments for certain obstetric and pediatric procedures in their state plans. Each state establishes its own payment levels for Medicaid services; however, Medicaid regulations (42 CFR 447.204) provide that payments must be sufficient to enlist enough providers so that covered services will be available to Medicaid beneficiaries to at least the extent that such services are available to the general population.

The purpose of this proposal is to promulgate permanent regulations regarding specific obstetric and pediatric maximum payment amounts to supersede the temporary emergency regulation adopted by DMAS which became effective July 1, 1990.

Attachment 4.19 B of the Plan contains reimbursement methodologies for all covered services except for inpatient hospital and long-term care, which are covered in other Plan attachments. This amendment would add a new supplement 1 to Attachment 4.19 B, providing obstetric and pediatric payment rates, in conformance with the OBRA 89 requirement.

The payment rates listed in this amendment are the same as those listed in the emergency regulations which this proposed regulation would supersede, and were approved by the Health Care Financing Administration on December 10, 1990. The only changes (the addition of several procedure codes) in this proposed regulation over the current emergency regulation were required by HCFA during the State Plan amendment approval process.

VR 460-03-4.1921. Methods and Standards for Other Types of Services: Obstetric and Pediatric Maximum Payment.

CPT-4 Code	Description	Payment
PEDIATRIC SERVICES		
1. Office Medical Services.		
NEW PATIENT		
90000	Office medical service, new patient; brief service	\$20.00
90010	limited service	25.00
90015	intermediate service	27.00
90017	extended service	33.00
90020	comprehensive service	36.75
ESTABLISHED PATIENT		
90030	Office medical service, established patient; minimal service	\$5.00
90040	brief service	15.00
90050	limited service	20.00
90060	intermediate service	23.00
90070	extended service	28.00
90080	comprehensive service	36.75
2. Emergency Department Services.		
NEW PATIENT		
90500	Emergency department service, new patient; minimal service	\$15.00
90505	brief service	21.00
90510	limited service	28.40
90515	intermediate service	42.00
90517	extended service	50.00
90520	comprehensive service	75.00
ESTABLISHED PATIENT		
90530	Emergency department services, established patient; minimal service	\$11.00
90540	brief service	21.00
90550	limited service	29.25
90560	intermediate service	30.00
90570	extended service	40.00
90580	comprehensive service	55.00
3. Immunization Injections.		
90701	Immunization, active; diphtheria and tetanus toxoids and pertussis vaccine (DTP)	\$17.91
90702	diphtheria and tetanus toxoids (DT)	4.18
90704	mumps virus vaccine, live	17.97
90705	measles virus vaccine, live, attenuated	16.13
90706	rubella virus vaccine, live	16.69
90707	measles, mumps and rubella virus vaccine, live	32.92
90708	measles and rubella virus vaccine, live	23.33
90709	rubella and mumps virus vaccine, live	25.02
90712	poliovirus vaccine, live, oral (any type(s))	12.32
90737	Hemophilus influenza B	20.25
Note: appropriate office visit may be billed in addition to the above immunization injections		
4. Preventive Medicine.		
NEW PATIENT		
90751	Initial history and examination related to the healthy individual,	\$31.50

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	including anticipatory guidance; adolescent (age 12 through 17 years)		59501	(separate procedure) including antepartum and postpartum care	1221.00
90752	late childhood age 5 through 11 years	31.00	59520	Cesarean section, classic, including in-hospital postpartum care; (separate procedure)	961.00
90753	early childhood age 1 through 4 years	31.00	59521	including antepartum an postpartum care	1221.00
90754	infant (age under 1 year)	32.00	59540	Cesarean section, extreaperitoneal, including in-hospital postpartum care; (separate procedure)	1169.00
90755	Infant care to one year of age, with a maximum of 12 office visits during regular office hours, including tuberculin skin testing and immunization of DTP and oral polio	28.00	59541	including antepartum and postpartum care	1344.00
90757	Newborn care, in other than hospital setting, including physical examination of baby and conference(s) with parent(s)	26.25	59560	Cesarean section with hysterectomy, subtotal, including in-hospital postpartum care; (separate procedure)	1169.00
	ESTABLISHED PATIENT		59561	including antepartum and postpartum care	1344.00
90761	Interval history and examination related to the healthy individual, including anticipatory guidance, periodic type of examination; adolescent (age 12 through 17 years)	\$25.00	59580	Cesarean section with hysterectomy, total, including in-hospital postpartum care; (separate procedure)	1169.00
90762	late childhood (age 5 though 11 years) early childhood age 1 through 4 years	28.00	59581	including antepartum and postpartum care	1344.00
90764	infant (age under 1 year)	31.00		ABORTION	
90774	Administration and medical inter- pretation of developmental tests	10.00	59800	Treatment of spontaneous abortion, first trimester; completed medically	\$137.50
90778	Circadian respiratory pattern record- ing (pediatric pneumogram), 12 to 24 hour continuous recording, infant	10.00	59801	completed surgically separate procedure	338.50
	OBSTETRICAL SERVICES		59810	Treatment of spontaneous abortion, second trimester; completed medically	360.00
	1. Maternity Care and Delivery.		59811	completed surgically separate procedure	475.00
	INCISION		59820	Treatment of missed abortion, any trimester, completed medically or surgically	400.00
59020	Fetal oxytocin stress test	\$42.00	59830	Treatment of septic abortion	229.15
59025	Fetal nonstress test	25.00		2. Diagnostic Ultrasound.	
59030	Fetal scalp blood sampling; repeat	66.00 22.25		PELVIS	
59050	Initiation and/or supervision of internal fetal monitoring during labor by consultant	40.95	76805	Echography, pregnant uterus, B-scan and/or real time with image documentation; complete	\$90.00
	REPAIR		76615	limited (fetal growth rate, heart beat, anomalies, placental location)	60.00
59300	Episiotomy or vaginal repair only, by other than attending physician; simple	\$64.15	76816	follow-up or repeat	45.00
59305	extensive	183.55	76818	Fetal biophysical profile	75.00
	DELIVERY, ANTEPARTUM AND POSTPARTUM CARE		76825	Echocardiography, fetal heart in utero	29.55
59400	Total obstetric care (all-inclusive, 'global' care) includes antepartum care, vaginal delivery (with or without episiotomy, and/or forceps or breech delivery) and postpartum care	\$930.00	76855	Echography, pelvic area (Doppler)	33.00
59410	Vaginal delivery only (with or without episiotomy, forceps or breech delivery) including in-hospital postpartum care (separate procedure)	670.00		*****	
59412	External cephalic version, with or without tocolysis	84.00		Title of Regulation: VR 460-04-8.5. Home and Community Based Ventilation Services for Technology Assisted Individuals .	
59420	Antepartum care only separate procedure	232.00		Statutory Authority: § 32.1-325 of the Code of Virginia.	
59430	Postpartum care only separate procedure	28.00		Public Hearing Date: N/A - Written comments may be submitted until April 26, 1991 (See Calendar of Events section for additional information)	
	CESAREAN SECTION			Summary:	
59500	Cesarean section, low cervical, including in-hospital postpartum care;	\$961.00		<i>The purpose of this proposal is to promulgate permanent regulations regarding Medicaid services for</i>	

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technology-assisted individuals, to supersede the temporary emergency regulation which became effective on June 22, 1990.

Since December 1988, DMAS has provided home-based services under a Social Security Act waiver to individuals younger than 21 who are ventilator dependent and whose care would otherwise require prolonged institutionalization. Under this waiver, DMAS provided in-home nursing care, respite care, and the purchase or rental of apnea monitors to ventilator-dependent children. In addition, this waiver allowed only certain hospital-based entities to contract with DMAS for provision of health care coordination, thereby limiting statewide service availability.

The 1990 General Assembly directed that DMAS seek expansion of the waiver to include persons dependent upon other types of technology. In developing this amended waiver, DMAS consulted with health care professionals in acute care settings rendering care to technology-assisted individuals, other state agencies experienced in providing home-based waiver services and health care professionals in the health care coordination field. On April 26, 1990, acting for the Secretary of Health and Human Services, the Health Care Financing Administration (HCFA) approved the new waiver request. This waiver not only broadened the population served to include individuals dependent upon ventilators and other medical technology, but it also expanded the definition of entities which can provide health care coordination, and added nutritional supplements (nonlegend drugs) to the list of medical supplies which can be provided to persons receiving services under the waiver. DMAS promulgated the provisions of the waiver in an emergency regulation which became effective on June 22, 1990.

This proposed regulation contains two technical corrections not present in the emergency regulation it would replace. One includes minor changes in eligibility requirements directed by HCFA, and the other would allow DMAS to contract with home health agencies which are either licensed or certified to provide private duty nursing or respite care.

VR 460-04-8.5. Home and Community Based Services for Technology Assisted Individuals.

§ 1. Definitions.

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

"DMAS" means the Department of Medical Assistance Services.

"Health care coordinator" means the health care professional designated by the hospital provider contracted

with DMAS to perform health care coordination as responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished.

"Health care coordination" means a comprehensive needs assessment, determination of cost effectiveness, and the coordination of the service efforts of multiple providers in order to avoid duplication of services and ensure the individual's access to and receipt of needed services.

"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized by the medical community as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are those not already available under other services covered by the Plan.

"Plan of Care" means the written plan of services and supplies certified by the attending physician needed by the individual to ensure optimal health and safety for an extended period of time.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Providers" means those individuals or facilities registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the ventilator dependent technology assisted individual (up to age 21) for a short period(s) period or periods of time (a maximum of 15 days per year or 360 hours per 12-month period). Respite care shall be provided in the home of the individual's family or caretaker.

"Routine respiratory therapy" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.

"State Plan for Medical Assistance" or *"the Plan"* means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Technology assisted" means any child, younger than 21 years, defined as chronically ill or severely impaired whose illness or disability would, in the absence of home care services, precipitate admission to or prolong that child's stay in a hospital, nursing facility, or other long-term care facility. This individual must need both a medical device

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to compensate for the loss of a vital body function and substantial and ongoing nursing care to avert death or further disability. The technology assisted child shall include one or more of the following categories:

1. Children dependent at least part of each day on mechanical ventilators.
2. Children requiring prolonged intravenous administration of nutritional substances or drugs.
3. Children having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, suctioning, oxygen support, or tube feeding.

§ 2. Coverage statement.

A. Coverage shall be provided under the administration of the Department of Medical Assistance Services DMAS for certain ~~ventilator dependent~~ technology assisted individuals up to the age of 21 who would otherwise remain in hospitals.

B. The objective of this waiver is to provide for medically appropriate and cost-effective coverage of services necessary to maintain these individuals in the community.

C. Coverage shall not be provided for these services in board and care facilities.

D. Coverage shall be provided for private duty nursing, respite care, *nutritional supplements (nonlegend drugs)* and medical supplies and equipment not otherwise available under the State Plan. All such services shall be covered only in the individual's home.

§ 3. Covered services and provider requirements.

A. Private duty nursing service shall be covered for individuals up to the age of 21 qualified for ~~ventilator technology assisted~~ waiver services. This service shall be provided only through a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation, and with which DMAS has a contract for private duty nursing. At a minimum the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. During the first 30 days after the individual's discharge from the hospital admission to the waiver service, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with ~~ventilator dependency~~ technology assistance. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24 hour period. The department may grant individual exceptions to these maximum limits based on documented emergency

needs of the individual and continued aggregate cost effectiveness of community services.

2. If the individual is weaned from the ~~ventilator technology~~, reimbursement may be available for private duty nursing for a maximum of 16 hours per 24-hour period not to exceed two weeks from the date the attending physician certifies the cessation of ~~ventilator dependency~~ technology assistance.

3. The hours of private duty nursing shall be limited by medical necessity and cost effectiveness.

B. Respite care service shall be covered for individuals up to the age of 21 who are qualified for ~~ventilator technology~~ services. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. Durable medical equipment and supplies not otherwise covered in the State Plan shall be provided for individuals qualified for ~~ventilator technology~~ services. This service shall be provided by persons qualified to render it.

1. Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

a. Medical equipment and supplies shall be prescribed by the attending physician and included in the Plan of Care, and shall be generally recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the individual.

b. Vendors of durable medical equipment and supplies related to the ~~ventilator technology~~ upon which the individual is dependent shall have a contract with DMAS to provide services.

c. In addition to providing the ventilator or other respiratory-devised support and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

- (1) 24 hour on-call for emergency services;
- (2) Technicians to make regularly scheduled maintenance visits at least every 15 days and more often if called;
- (3) Replacement or repair of equipment and supplies as required; and
- (4) Respiratory therapist registered or certified with the National Board for Respiratory Care (NBRC)

on-call 24 hours per day and stationed within two hours of the individual's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Commonwealth of Virginia Board Department of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this ~~ventilator dependent~~ *technology assisted* population to be duly registered, licensed or certified.

2. Medical equipment and supplies include:

a. All durable medical equipment and supplies which are covered under the State Plan. See the attachment listing for specific items which are covered.

b. Apnea monitor.

D. Nutritional supplements (nonlegend drugs) shall be covered for those individuals for whom the physician has determined that these are medically necessary and who are receiving other waiver services.

§ 4. Provider reimbursement.

A. All private duty nursing services shall be reimbursed at an hourly negotiated fee.

B. Respite care shall be reimbursed at an hourly negotiated fee.

C. Prior approval by DMAS shall be required for all durable medical equipment and other medically related supplies furnished under this program before the individual's ~~discharge from the hospital admission to waiver services~~ and before reimbursement. If additional equipment and supplies are needed following the individual's ~~discharge from the hospital admission to waiver services~~, the Health Care Coordinator shall obtain DMAS' approval. This prior authorization requirement shall apply to all durable medical equipment and supplies that are covered under the State Plan or the waiver.

D. Prior approval by DMAS shall be required for nutritional supplements furnished under this program before the individual's admission to waiver services and before reimbursement. If nutritional supplements are needed following the individual's admission to waiver services, the health care coordinator must obtain DMAS' approval.

§ 5. Patient qualification and eligibility requirements.

A. Medicaid eligible individuals, younger than 21, shall be entitled to this service based on the anticipated cost to Medicaid of home care being less than the anticipated cost

to Medicaid of the individual remaining in the hospital and based on continued aggregate cost effectiveness of community services.

B. The individual shall have a live-in primary care giver who accepts responsibility for the individual's health and welfare.

C. These services shall not be available to ~~inpatients of~~ *individuals receiving care in* general acute care hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for the mentally retarded.

D. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. The medically needy individuals participating in the waiver will also be considered as if they were institutionalized for the purpose of applying the institutional deeming rules. *All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individuals were residing in an institution or would require that level of care.*

2. *Virginia will treat the income of an eligible individual who receives home and community-based care services under 42 CFR 435.217 using the methodology in 42 CFR 435.735 to reduce the agency's payment for home and community-based services. The following amounts from the individual's total income (including amounts disregarded in determining eligibility) will be deducted:*

a. *For the individual's maintenance needs, the current Supplemental Security Income (SSI) payment standard for one individual (the categorically needy income standard for one).**

b. *For an individual with a spouse living in the home, an additional amount for the maintenance needs of the spouse based upon a reasonable assessment of need but not to exceed the current Supplemental Security Income payment for one individual (the categorically needy income standard for one).*

e. *For an individual with a family at home, an additional amount for the maintenance needs of the family based upon a reasonable assessment of need*

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but not to exceed the medically needy income standard for a family of the same size.

d. Amounts for incurred expenses for Medicare and other health insurance premiums, deductibles, or coinsurance charges.

e. Amounts for incurred expenses for necessary medical or remedial care not subject to payment by a third party recognized under state law but not covered under the Commonwealth's Medicaid Plan within the same reasonable limits established under the State Plan for institutionalized individuals.

* Although Virginia has elected to apply more restrictive eligibility requirements than SSI, Virginia does not apply a more restrictive income standard.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915 (c) (3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902(a)(10)(B), to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amount for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

E. Assessment and Plan of Care requirements.

1. The initial assessment and development of the Plan of Care shall be conducted by a hospital-based multidisciplinary team. The team shall include an attending physician, a nurse, and a social worker.

a. The physician shall be currently certified by the Board of Medicine and have a currently valid license to practice medicine in the Commonwealth. The physician shall have experience in the needs and care of ventilator dependent technology assisted persons and the needs of children.

b. The nurse shall be a registered nurse currently and validly licensed to practice nursing in the Commonwealth. The nurse shall have experience in the needs and care of ventilator dependent technology assisted persons and the needs of children.

c. The social worker shall have a master's degree in social work. The social worker shall have experience in the needs and care of ventilator dependent technology assisted persons and the needs of children.

d. Other specialists who are currently and validly licensed, registered or certified to practice their specialties within the Commonwealth may participate in the assessment and care planning process. These other specialists shall have experience in the needs and care of ventilator dependent technology assisted persons and the needs of children.

e. The Health Care Coordinator is responsible for ensuring that the assessment, care planning, monitoring, and review activities required by DMAS are accomplished. The Health Care Coordinator shall be either a nurse or a social worker meeting the

requirements of subdivision b or c above.

2. Referral for waiver services and assessment.

a. A service referral ~~shall~~ *may* originate from *either* the clinical staff in the hospital where the individual is located *or from the clinical staff in the community where the individual is receiving non-Medicaid funded home and community based services*.

b. The Health Care Coordinator shall meet with the family and representatives of the clinical patient care team to preliminarily assess the individual's needs.

c. Upon receiving parental or guardian consent to explore the possibility of home care, the Health Care Coordinator shall arrange for the assessment process for waiver services. The initial assessment and development of the Plan of Care for a potential waiver participant will be conducted by the ~~hospital-based~~ *health care coordination multidisciplinary team*.

d. At the time of assessment, certification from the attending physician that the individual would otherwise require continued acute care or skilled nursing facility care will be necessary ~~in order~~ to continue the assessment process.

e. If the physician certifies the need for care and if the family desires community based care, the Health Care Coordinator shall continue the assessment process. The Health Care Coordinator shall perform a home visit to ensure suitability of the home environment for the individual's placement. Concurrently, the Health Care Coordinator or social worker of the multidisciplinary team shall conduct a family assessment to ensure the family's willingness and ability to participate in home care. Consideration shall also be given to the extent of family and community support available to meet the care needs of the ~~ventilator dependent~~ *technology assisted* individual.

3. Development of the Plan of Care.

a. Upon completion of the medical/nursing/functional assessment and the family and home assessment, the Plan of Care is developed.

d. At minimum, the Plan of Care shall include:

(1) A statement of the appropriateness of the home in which the individual is to be placed.

(2) Identification of the type, frequency, and amount of nursing care needed. This shall include the name of the provider agency, whether the nurse is an RN

or an LPN, and verification that the nurse is licensed to practice in the Commonwealth. This shall also contain documentation that the Health Care Coordinator has verified that the provider agency is an enrolled provider with DMAS to provide skilled nursing services for this population.

(3) Identification of all other services that are needed ~~in order~~ for the individual to be ~~discharged~~ *maintained in the home*. The statement shall include, as appropriate, speech therapy, occupational therapy, physical therapy, transportation, physician services, the frequency and amount of service needed, the provider of the service, and the payment source.

(4) A complete list of equipment and supply needs, and identification of the provider and source of payment.

(5) Identification of the type, frequency, and amount of care that the family or other informal caregivers shall provide.

(6) Identification of the anticipated utilization of respite care during the 12-month period ~~post-hospital discharge~~ *after admission to the waiver services*.

(7) Other referrals for assessment for services (as needed and appropriate) to include *but not be limited to* the school system; Women, Infants, and Children Program; child development clinic services; and Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) services.

(8) Identification of the primary care physician in the community who has agreed to follow the individual in the community.

(9) The appropriateness of the medical care, including a statement from the multidisciplinary team as well as the individual's primary care physician, to be signed by the legally responsible adult, attesting that the medical care the individual is to receive in the home is agreed to by the legally responsible adult and is appropriate in the opinion of all involved parties.

4. Cost effectiveness computations.

a. These computations shall be completed by the Health Care Coordinator upon completion of the Plan of Care.

b. The Health Care Coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a 12-month period. The Health Care Coordinator shall then compare DMAS costs for the waiver to anticipated costs to DMAS for continued hospitalization of the individual.

Proposed Regulations

5. Patient selection of waiver services.

a. When the determination that the individual's needs can appropriately and cost-effectively be met in the community with these waiver services, the Health Care Coordinator shall give the legally responsible party and the primary care giver, if separate persons, the choice of waiver services or ~~continued~~ hospitalization.

b. If waiver services are chosen, the legally responsible party and the primary care giver if separate persons will also be given the opportunity to choose the providers of service, if more than one provider is available to render the services.

6. DMAS shall review and approve the plan of care prior to the individual's ~~hospital discharge~~ admission to the community with waiver services, and prior to Medicaid payment for waiver services.

7. Reevaluation requirements and utilization review.

a. Reevaluations shall be conducted by the Health Care Coordinator at least every 30 days during the first three months after ~~discharge from the hospital admission to waiver services~~ and at any time when a change in the individual's condition indicates the need for reevaluation. After the first three months, the Health Care Coordinator shall conduct a home visit once every three months and more often if necessary.

b. DMAS is responsible for performing utilization review at least semi-annually and for the maintenance of supporting documentation. DMAS shall also maintain a copy of the Plan of Care, the initial evaluation, and each reevaluation for a minimum period of five years.

c. The Health Care Coordinator shall review the Plan of Care for appropriateness of the level, amount, type, and quality of services provided as well as for monitoring the cost effectiveness of the individual's care in the community.

d. Medical necessity of waiver services shall be reviewed by the Health Care Coordinator.

e. The Health Care Coordinator shall submit this information to DMAS.

f. During the semi-annual review period, a DMAS utilization review analyst shall review the record and conduct a home visit. The purposes of this record review and home visit is to determine the correctness of the level of care; to ensure that the amount, duration, and scope of the services are appropriate; to ensure that the individual's health and welfare are protected; and to ensure that cost effectiveness is maintained.

§ 6. Appeal of denied coverage.

A. DMAS shall provide the opportunity for a fair hearing under 42 CFR Part 431, Subpart E, to individuals who are not given the choice of home and community-based services as an alternative to remaining in the hospital or entering a skilled nursing facility services or who are denied the service of their choice or the provider of their choice.

B. The individual shall be advised of the denial and of his right to appeal.

§ 7. Documentation requirements.

The Health Care Coordinator shall submit the following documentation to DMAS before the individual's ~~discharge from the hospital~~ admission to waiver services :

1. All of the required assessment and documentation.
2. Certification of level of care.
3. Plan of care.
4. Cost-effectiveness computation.
5. Agreement of legally responsible party and the primary care giver, if separate persons, with the plan of care.
6. Choice of home and community-based care or hospital care.
7. Choice of waiver service providers, if waiver services are chosen.

ATTACHMENT LIST OF COVERED DURABLE MEDICAL EQUIPMENT

Medical Equipment and Supplies Covered Under State Plan.

1. Ventilator and necessary attachments.
2. Back-up portable ventilator and attachments.
3. Suction machine, stationary.
4. Suction machine, portable.
5. Ambu bag.
6. Patient lift.
7. Overbed table.
8. Commode, shower chair, or stretcher.
9. Environmental control unit.

10. Alternative communication devices.
11. Tracheostomy tubes.
12. Tracheostomy care kits or individual supplies normally found in the kit.
13. Gastrostomy , *or other feeding*, tubes.
14. Feeding pumps.
15. Suction catheters.
16. Sterile water.
17. Sterile saline.
18. Special *medical* mattresses.
19. Oxygen and oxygen equipment.
20. Foley catheters.
21. Bed pans.
22. Antiseptic solution for cleaning of ventilator and respiratory supplies.
23. Wheelchair, manual or power, including adaptive seating devices to prevent contractures and skin breakdown.
24. Hospital bed.
25. Adaptive mobility transportation device (Mulholland chair).
26. Phrenic pacer (implant, transmitter box, antenna and battery).
27. Pharmacological preparation necessary for life sustaining nutritional management legend drug only).
28. Pulse oximeter.

Medical Equipment and Supplies Not Covered Under State Plan

1. Apnea minitor.

NEEDS ASSESSMENT

MEDICAL STATUS CONTINUED

Name of Patient _____		Home Address _____		Telephone # _____	Alternate # _____
Name of Primary Caretaker _____		Address of Primary Caretaker _____		Relationship _____	Telephone # _____
Birthdate _____	Birthplace <input type="checkbox"/> USA _____ <input type="checkbox"/> Other _____	Living Environment <input type="checkbox"/> House <input type="checkbox"/> Apartment <input type="checkbox"/> Rented Room(s) <input type="checkbox"/> Trailer <input type="checkbox"/> Domiciliary <input type="checkbox"/> Other _____		Marital Status <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Unknown	
Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Family Income <input type="checkbox"/> \$20,000 or More <input type="checkbox"/> \$15,000 - \$19,999 <input type="checkbox"/> \$10,000 - \$14,999		<input type="checkbox"/> \$5,000 - \$9,999 <input type="checkbox"/> less than \$5,000		
Income Source <input type="checkbox"/> Employment <input type="checkbox"/> Other <input type="checkbox"/> Social Security <input type="checkbox"/> ADC (Specify) _____		Levels (state #) _____		Living Arrangements <input type="checkbox"/> Alone <input type="checkbox"/> Spouse/Family <input type="checkbox"/> Other (Specify) _____	
Patient Education Needs Education Level _____ School Attending (Plans to Attend) _____ Supportive Needs _____		Health Care Coverage <input type="checkbox"/> MEDICARE # _____ <input type="checkbox"/> MEDICAID # _____ <input type="checkbox"/> OTHER TYPE _____ Name of Carrier _____ Social Security # _____			
Medical History _____		Family Constellation _____			
Social Support Available (T = totally provided, P = partially provided, N = provided)					
<input type="checkbox"/> Activities of daily living	<input type="checkbox"/> Housekeeping	<input type="checkbox"/> Meal Preparation	<input type="checkbox"/> Transportation		
<input type="checkbox"/> Supervision	<input type="checkbox"/> Living Space	<input type="checkbox"/> Shopping	<input type="checkbox"/> Other		

MEDICAL STATUS

Diagnosis	Date	Sight	Hearing
_____	_____	<input type="checkbox"/> Normal <input type="checkbox"/> Compensated	<input type="checkbox"/> Normal <input type="checkbox"/> Compensated
_____	_____	<input type="checkbox"/> Uncompensated <input type="checkbox"/> Complete Loss	<input type="checkbox"/> Uncompensated <input type="checkbox"/> Complete Loss

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Anatomical Impairments				Tests (results & date)
Describe	Rehabilitation	Onset		
<input type="checkbox"/> NONE				Height _____ Weight _____
Hip fracture				Blood Pressure _____
Other fracture				Cholesterol _____
Dislocations				BUN/albuminuria _____
Missing limbs				Blood Sugar _____ (specify test)
Paralysis/Paresis				Hemoglobin/Hematocrit _____
Joint Motion				DIG level _____ (specify test)
Contractures				Prothrombin time _____
				Serum K+/Na+/HCO ₃ - _____
				Chest X-Ray _____
				Other _____
				pH/CO ₂ /pO ₂ _____ (arterial/capillary)
				oxygen saturation % _____

Allergies _____

Ventilator (describe or define, as appropriate)

Make/Model _____ Rate _____ Peep _____ Hours of Use _____

Tidal Volume/PIP _____ None Ventilator Time _____ FIO₂ _____ CPAP _____ Flow Rate (O₂/Air)

Humidity Source _____

Nutrition	Dentition
Diet _____ <input type="checkbox"/> po intake <input type="checkbox"/> G-tube <input type="checkbox"/> J-tube <input type="checkbox"/> N-G tube	<input type="checkbox"/> No teeth missing or few teeth missing <input type="checkbox"/> Some opposing teeth <input type="checkbox"/> No teeth or no opposing teeth <input type="checkbox"/> Dentures <input type="checkbox"/> Age appropriate
Supplement _____ <input type="checkbox"/> po intake <input type="checkbox"/> G-tube <input type="checkbox"/> J-tube <input type="checkbox"/> N-G tube	

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PRE-DISCHARGE FAMILY ASSESSMENT

1. Primary Caregiver _____ Secondary Caregiver _____
 2. Address _____ Address _____
 3. Relationship to patient _____ Relationship to patient _____
 4. Current employment/education: _____
 Name of employer _____ Name of employer _____
 Address of employer _____ Address of employer _____
 Phone # of employer _____ Phone # of employer _____
 Work hours (am/pm) _____ Work hours (am/pm) _____
 Education level _____ Education level _____
 5. Family Interaction: Describe the role patterns of the family constellation. Describe communication patterns among family members. What strategies does the family use in solving problems? Who will be making major family decisions? Is this a change? How involved are family members in the community. _____

 6. Sibling Interaction: Names and ages of siblings (circle those living outside the patient's home). How do the siblings interact with the patient? _____

 7. Significant others: Names, ages and relationship of anyone else sharing patient's residence. What is their willingness to participate in the patient's care? _____

 8. Does the family desire home care? Yes ___ No ___
 9. Is the family willing to participate in learning procedures for home care? Yes ___ No ___
 10. Does the family have a good understanding of the patient's disease process? Yes ___ No ___
 11. Does the family understand the 24-hour commitment to home care that will be required? Yes ___ No ___
 12. Describe the family's perception of assisted ventilation _____

 13. How does the patient's disability affect the family's normal activities? _____

14. Describe the effect of the patient's ventilatory support on family relationships _____
 15. What aspects of the patient's care cause concern to the family? _____
 16. Describe parent/child interaction _____
 17. Describe the family's strengths _____
 18. Support Available

	Hours/Day*	Specify Caregiver	Unmet Need
A. Activities of Daily Living	_____	_____	_____
B. Skilled Care Needs			
Tube feedings	_____	_____	_____
Trach care	_____	_____	_____
Respiratory therapy	_____	_____	_____
Ventilator support	_____	_____	_____
Medication administration	_____	_____	_____
Physical assessment	_____	_____	_____
C. Supervision	_____	_____	_____
D. Instrumental Activities of Daily Living	_____	_____	_____
E. Transportation	_____	_____	_____
F. Other	_____	_____	_____

* Indicate if variation during week (i.e., 8 hours/day M-F, 16 hours/day Saturday-Sundays).
 19. Does family anticipate a need for respite care? ___ Yes ___ No
 If yes, explain _____

 20. Assessment: _____

 Signature of person completing the assessment _____ Date of assessment _____

PRE-DISCHARGE HOME EVALUATION

Name of Patient _____ Name of Parent/Caretaker _____

Address _____ Telephone # _____

Directions to home _____

Type of home: Apartment _____ One floor _____
 House _____ Two or more floors _____

Physical Facility Standards for the Home Adequate Inadequate

- Accessibility
- Physical facility can accommodate the patient's specific disability (to include equipment necessary for facilitating mobility and/or transport) to provide access with single caretaker assistance.
 - Where applicable, physical facility does not restrict delivery of large or heavy medical equipment.

- Storage
- Immediate access, e.g., night stand--used to store equipment/supplies with utilization frequency of 8 hours or less, e.g., suction catheters, suction machine, gloves, dropper bottle.
 - Proximal access, e.g., closet used to store equipment/supplies with utilization frequency of 24 hours or less, e.g., infant scale, water bottles, specimen cups, and immediate access items in small volumes. The proximal access storage area is in close proximity to the patient's room.
 - Bulk storage, e.g., basement or garage must be large enough to accommodate 1 month's equipment/supplies and at least 1 week's oxygen supply.

- Space Requirements/Other
- The room to be used by the patient must have minimum square footage area 9 ft. x 9 ft. Note: Any living area in the house may be designated as the "patient's room" (e.g., bedroom, dining room, recreation room).
 - Location of patient's room: First floor _____ Second floor _____
 - A qualified electrician has evaluated the physical facility for ability to accommodate the patient's electrical supply needs.
 - The physical facility is supplied by a minimum of 100 amp. electrical service.
 - A minimum of two separate 15 amp. branch circuits supply the patient's room.
 - If the main distribution panel utilizes fuses, four spare fuses of appropriate capacity are available for a total of eight duplex outlets in the patient's room.

Physical Facility Standards for the Home Adequate Inadequate

- A minimum of four duplex electrical outlets on each of the two 15 amp. branch circuits is available for a total of eight duplex outlets in the patient's room.
 Note: This is in addition to the usual and customary installation. Therefore, this requirement is not to be interpreted as the total number of outlets required for the patient's room.

Special Equipment

- A telephone is in the patient's room or reaches the patient's bedside although located in another room.
- A mechanical whistle is at the patient's bedside, if applicable.
- A battery-powered fluorescent flood light is at the patient's bedside.
- Power failure alarm/light is plugged into the same house electrical circuit as the ventilator.
- One smoke alarm and one five pound CO₂ fire extinguisher is located on each level of the home (including the basement).
- Describe any other special equipment.

Ventilation

- Ventilation is adequate to permit safe recharging of wet marine type batteries.

General

- Environmental controls are sufficient to maintain a healthy environment free of pollutants and fluctuating temperatures, and ensures adequate ventilation.
- Plumbing is sufficient to allow an adequate, potable water supply and sanitary disposal of waste.
- Summary of equipment/home modifications necessary for safe discharge home:
- Name, address and phone number of person(s) (outside of immediate household) to notify in case of emergency, i.e., friend, neighbor, relation.)
- Assessment

Signature of person completing the evaluation _____

Date of evaluation _____

TECHNOLOGY DEPENDENT SERVICES PLAN OF CARE

Name _____ Address _____
 Medicaid # _____ Hospital Medical Record # _____

NURSING AND HOME CARE NEEDS	CAREGIVER AND SCHEDULE								
	RN/LPN	Hrs/Day	Days/Wk	Family	Hrs/Day	Days/Wk	Other	Hrs/Day	Days/Wk
Respiratory Therapy/ Ventilatory Support	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Nutritional Support	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Activities of Daily Living	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Instrumental Activities of Daily Living	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Supervision	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Tracheostomy Care	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____
Medication Administration	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____	<input type="checkbox"/>	_____	Day _____
		_____	Evn _____		_____	Evn _____		_____	Evn _____
		_____	Nte _____		_____	Nte _____		_____	Nte _____

Name of Nursing Provider _____ Telephone Number _____ Director _____
 Address _____ Medicaid Home Health ID # _____
 Home Health Certification # _____

1. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

2. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

3. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

4. Substitute Nurse _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

RESPIRE CARE

Anticipated Need _____

Name of Agency _____ Director _____
 (If same as nursing, note same and do not re-complete)
 Address _____ Telephone Number _____
 Medicaid Home Health ID # _____
 Home Health Certification # _____

1. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

2. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

3. Nurse Providing Care _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

4. Substitute Nurse _____ Virginia License # _____ RN LPN Shift _____
 Describe Experience _____

ANCILLARY NEEDS	PROVIDER (Name/Telephone #)	DATE OF REFERRAL	SERVICES NEEDED
Home Health			
PT			
OT			
Speech			
Dental			
Respiratory			
Rehabilitation			
Developmental Training			
Education (school)			
Nutritional			
Counseling/support group			

EMERGENCY SUPPORT—Emergency procedures have been established with:

<p>RESCUE SQUAD: Name: _____ Contact: _____ Address: _____ Notified: _____</p>	<p>AMERICAN RED CROSS: Name: _____ Contact: _____ Address: _____ Notified: _____</p>
<p>EMERGENCY ROOM: Name: _____ Contact: _____ Address: _____ Notified: _____</p>	<p>ELECTRIC COMPANY: Name: _____ Contact: _____ Address: _____ Notified: _____</p>
<p>FIRE DEPARTMENT: Name: _____ Contact: _____ Address: _____ Notified: _____</p>	<p>TELEPHONE COMPANY: Name: _____ Contact: _____ Address: _____ Notified: _____</p>
<p>POLICE DEPARTMENT: Name: _____ Contact: _____ Address: _____ Notified: _____</p>	<p>GAS COMPANY: Name: _____ Contact: _____ Address: _____ Notified: _____</p>

DURABLE MEDICAL EQUIPMENT	USE MONTH	ITEM COST	MONTHLY COST	ACCESSORIES/SUPPLIES
Ventilator Equipment and Supplies				
Feeding Supplies				
Adaptive Devices				
Other				

Name of Equipment Agency _____ Director _____
 Address _____ Telephone Number _____
 _____ Medicaid Provider ID # _____

Respiratory Therapist _____ License Number _____

Respiratory Therapist is on call 24 hours per day to meet the needs of this patient _____

Respiratory Therapist is stationed within 2 hours of the patient's home _____

Agency agrees to make regularly scheduled maintenance visits every 15 days and more often if needed, and replace to repair equipment and supplies as needed _____

COST EFFECTIVENESS CALCULATION

- | | |
|--|---|
| A. Average Monthly Cost of Hospital Care _____ | D. Monthly Hours of Nursing _____ |
| B. Patient Pay _____ | E. X Nursing Rate x _____ |
| C. Total Medicaid Cost of Hospital Care _____ | F. Total Nursing Cost _____ |
| | G. Monthly Hours of Respite Care _____ |
| | H. X Respite Care Rate x _____ |
| | I. Total Respite Care Cost _____ |
| | J. Monthly Cost of Apnea Monitor _____ |
| | K. Cost of Waiver Services _____ |
| | (F + I + J) _____ |
| | L. Patient Pay _____ |
| | M. Total Medicaid cost of waiver services _____ |
- C must be less than or equal to M

_____ (Name of Patient) requires the level of care which can only be received in either a hospital, skilled nursing facility or at home with appropriate care as indicated on this Plan of Care to meet the identified medical/functional/nursing needs of the individual.

Home Care is Approved Home care for this technology-dependent individual is appropriate to adequately meet the recipient's needs and assures that all other resources have been explored prior to Medicaid authorization for this recipient.

- _____ Home environment is found to be safe and therapeutic, including necessary home modifications.
- _____ Family has completed required training.
- _____ Community resources are available to support the service needs of the child.
- _____ Plan of Care is cost effective.

Home Care is Not Approved

- _____ Appropriate Plan of Care could not be developed. Reason _____
- _____ Plan of Care not cost effective.
- _____ Family decided Home Care was not a viable option.
- _____ No provider agency available.
- _____ Other _____

Hospital Attending Physician _____ Date _____ Health Care Coordinator _____ Date _____
 Registered Nurse _____ Date _____ Social Worker _____ Date _____
 Community Attending Physician _____ Date _____

FREEDOM OF CHOICE

In accordance with the policies and procedures of the Department of Medical Assistance Services I have been informed by (hospital) _____ Health Care Coordinator of the Medicaid-funded options available to me and I choose:

Home Care Hospital Care

I have been given a choice of the available providers. _____ Yes _____ No

I understand and approve the prescribed plan of care for (name) _____ I agree to assume responsibility for maintaining a safe and therapeutic environment that supports this plan of care. In addition, I agree to perform those tasks designated in the plan of care as my responsibility. I also agree to assume responsibility for all required services in the event of an emergency.

Signature of Legally Responsible Person _____ Date _____

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Month of Services Reported _____ Billing Code _____ Reimbursement _____

HEALTH CARE COORDINATION REASSESSMENT

CARE COORDINATOR _____ Hospital _____ Department _____
 Dates of Coordinator Visits/Contacts (note home visits) _____

PATIENT _____ Medicaid # _____ Social Security # _____
 Address _____ Phone # _____
 Birth Date _____ Start of care date _____ Sex _____
 Number of Hours Dependent on Ventilator _____ Days _____ Evenings _____ Nights _____
 Last Physician Visit _____ Orders Current/Renewed _____

CURRENT CLINICAL STATUS/HOSPITALIZATION/THERAPIES/OTHER SERVICES

NURSING AGENCY _____ Total hours provided _____ Status report received _____
 Contacts with nursing agency (identify contact and dates) _____

RESPIRE CARE _____ Hours provided _____ Reason _____ Total used YTC _____

RESPIRATORY THERAPY VISITS _____ Status report received _____

ADDITIONS/CHANGES TO EQUIPMENT/SUPPLIES _____

SIGNIFICANT CONTACTS WITH OTHER PROVIDERS OF CARE _____

SERVICES PROVIDED ACCORDING TO PLAN OF CARE? Yes _____ No _____ Comments _____

PLAN OF CARE MEETS PATIENT'S NEEDS TO ENSURE HEALTH, SAFETY AND WELFARE? Yes _____ No _____

Comments _____

CURRENT HOME/SUPPORT SYSTEM/SCHOOL STATUS _____

CLIENT/FAMILY RESPONSE TO IN-HOME SERVICES _____

PROBLEMS IDENTIFIED _____

OBJECTIVE/GOALS _____

RECOMMENDATIONS _____

Signature of Care Coordinator _____ Date completed _____ DNAS authorization _____ Date _____

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WPS58C-591

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-03-19. Coal Surface Mining Reclamation Regulations.

Statutory Authority: §§ 45.1-1.3 and 45.1-230 of the Code of Virginia.

Public Hearing Date: April 29, 1991 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The Department of Mines, Minerals and Energy is proposing to amend its Coal Surface Mining Reclamation Regulations for more effectively tracking certain outstanding regulatory violations by coal mining operations, and for blocking permitted activities by parties responsible for these operations until such violations are abated. These amendments (i) define the terms "owned or controlled" and "owns or controls" as they apply to coal mining operations in Virginia; (ii) establish additional requirements for reporting of violations and ownership and control data, prescribing the effect of that information on various permitting decisions; and (iii) provide criteria and procedures for the rescission of improperly issued permits.

The amendments are consistent with changes in federal rules promulgated under the authority of the U.S. Surface Mining Control and Reclamation Act of 1977. The U.S. Office of Surface Mining on May 11, 1989, and November 22, 1989, notified the department that changes had been made in the federal rules governing ownership and control of mining operations. The federal agency informed the department that it would have to amend corresponding Virginia regulations in a manner consistent with the federal requirements.

VR 480-03-19. Coal Surfacing Mining Reclamation Regulations.

§ 480-03-19.700.5. Definitions.

As used throughout this chapter, the following terms have the specified meaning except where otherwise indicated.

"Abatement plan" means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: Addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface

coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

"Act" means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter 19, Title 45.1 of the Code of Virginia).

"Actual improvement" means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground

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workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Anthracite" means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the division has determined that they comply with §§ 480-03-19.816.49, 480-03-19.816.56, and 480-03-19.816.133 or 480-03-19.817.49, 480-03-19.817.56, and 480-03-19.817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

"Authorized officer" means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

"Baseline pollution load" means the characterization of the pollution material being discharged from or on the

pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

"Best professional judgment" means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the division under §§ 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C. §§ 1311 and 1342).

"Best technology" means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize to the extent possible, disturbances, and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 480-03-19.816 and 480-03-19.817. Within the constraints of the permanent program, the division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

"Cemetery" means any area of land where human bodies are interred.

"Certification" when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."

"Coal exploration" means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data

by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the Federal Acquired Lands Leasing Act of 1947 (30 U.S.C. 351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 480-03-19.705 - Financial Interests Of State Employees, the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or *"coal processing"* means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" mean an extraordinary note which authorizes an attorney to confess judgment against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgment against him if the obligation set forth in the note is not paid when due. Such judgment may be taken by any person holding the note, which cuts off every defense which maker(s) of the note may otherwise have and it likewise cuts off all rights of appeal from any judgment taken on it. The note shall, at a minimum:

- (a) Contain the date of execution.
- (b) Be payable to the "Treasurer of Virginia."
- (c) Be due and payable in the event of bond forfeiture of the permit.
- (d) Be payable in a sum certain of money.

- (e) Be signed by the maker(s).

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

- (a) The deposit of cash in one or more federally-insured accounts, payable only to the division upon demand;

- (b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc. or Standard and Poor's, Inc.;

- (c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the division determines to contain all information required under the Act and this chapter.

"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Cooperative agreement" means a cooperative agreement entered into in accordance with § 523(c) of the federal act and 30 CFR Part 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the

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proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of: (a) The proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Department" means the Department of Mines, Minerals and Energy (DMME) of Virginia.

"Director" means the Director of the Department of Mines, Minerals, and Energy or his representative.

"Diminution" means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

"Disturbed area" means an area where vegetation, topsoil, or over burden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by subchapter VJ is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means the Division of Mined Land Reclamation of the Department of Mines, Minerals and Energy.

"Downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who perform any function or duty under the

Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

"Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Escrow account" means an account in a federally-insured financial institution.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with § 480-03-19.816.102(d) and 480-03-19.817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

"Extraction of coal as an incidental part" means for the purposes of Part 480-03-19.707, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 480-03-19.707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Federal Act" means the Federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

"Federal land management agency" means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal lands program" means a program established by the secretary pursuant to § 523 of the Federal Act to regulate surface coal mining and reclamation operations on federal lands.

"Federal lease bond" means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a federal

coal lease.

"Federal lessee protection bond" means a bond payable to the United States or the state, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on federal lands, pursuant to § 715 of the Federal Act.

"Federal program" means a program established by the secretary pursuant to § 504 of the Federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the Federal Act and 30 CFR Chapter VII.

"First water producing zone" means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

"Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged beyond a permittee's ability to repair or restore, or be destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under § 45.1-252 of the Act and Part 480-03-19.761, if those areas have characteristics requiring additional areas for protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

"Fund" as used in Subchapter VR means the Abandoned Mine Reclamation Fund established pursuant to § 45.1-261 of the Act.

"General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

"Government-financed construction" means construction funded 50% or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

"Government financing agency" means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

"Gravity discharge" means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

"Ground water" means subterranean water which exists within a totally saturated zone, stratum or group of strata.

"Growing season" means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-hollow fill" means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

"Higher or better uses" means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remaining permit area.

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"Historic lands" means historic, cultural, and scientific areas that could be damaged beyond a permittee's ability to repair or restore, or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, sites listed on a state or National Register of Historic Places, National Historic Landmark sites, sites having religious or cultural significance to native Americans or religious groups, and sites for which historic designation is pending.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Indemnity agreement" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

"Intermittent stream" means (a) A stream or section of a stream that drains a watershed of at least one square mile, or (b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the division.

(a) *"Cropland."* Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) *"Pastureland"* or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock

feed.

(c) "*Grazingland.*" Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) "*Forestry.*" Land used or managed for long-term production of wood, wood fiber, or wood derived products.

(e) "*Residential.*" Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.

(f) "*Industrial/Commercial.*" Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "*Recreation.*" Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "*Fish and wildlife habitat.*" Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) "*Developed water resources.*" Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "*Undeveloped land or no current use or land management.*" Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"*Leachate*" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.

"*Lease terms, conditions and stipulations*" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

"*Leased federal coal*" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

"*MSHA*" means the United States Mine Safety and Health Administration.

"*Mineral Leasing Act*" or MLA means the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181, et seq.

"*Mining plan*" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.

"*Mining supervisor*" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under their direction.

"*Moist bulk density*" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees Centigrade.

"*Mulch*" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.

"*Natural hazard lands*" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.

"*Net worth*" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.

"*Noxious plants*" means living plants which are declared to be noxious weeds or noxious plants pursuant to the Virginia Noxious Weed Law, Chapter 17.2, Title 3.1, Code of Virginia ; (1950) as amended .

"*Occupied dwelling*" means any building that is currently being used on a regular or temporary basis for human habitation.

"*Office*" or "*OSM*" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Federal Act.

"*Operator*" means permittee any person engaged in coal mining who removes or intends to remove more than 250

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tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

“Other treatment facilities” means any facilities for chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area.

“Outslope” means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

“Overburden” means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

“Owned or controlled” and “owns or controls” mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition.

(a)(1) Being a permittee of a surface coal mining operation;

(2) Based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal

after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

“Perennial stream” means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include “intermittent stream” or “ephemeral stream.”

“Performance bond” means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

“Performing any function or duty under this Act” means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

“Permanent diversion” means a diversion which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

“Permanent impoundment” means an impoundment which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

“Permit” means a permit to conduct surface coal mining and reclamation operations issued by the division pursuant to the Act and this chapter or by the Secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the division under a cooperative agreement or by the OSM where there is no cooperative agreement.

“Permit application package” means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the Federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

“Permit area” means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee’s performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued pursuant to this chapter may be excluded from the permit area.

“Permittee” means a person holding or required by the

Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the division, where a cooperative agreement pursuant to § 45.1-230 B of the Act has been executed.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or *"person with a valid legal interest"* shall include any person—

(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exportation or surface coal mining and reclamation operations or any related action of the division; or

(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.

The term *"adversely affected"* is further defined as meaning perceptibly harmed. *"Aesthetics"* means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

"Piezometer" means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

"Pollution abatement area" means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

"Pool Bond fund" means the Coal Surface Mining Reclamation Fund established pursuant to § 45.1-270.1 of the Act.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. *"Precipitation event"* also includes that quantity of water coming from snow cover as snow

melt in a limited period of time.

"Previously mined area" means land disturbed or affected by coal mining operations prior to the effective date of the Federal Act for that land that was not reclaimed in accordance with the requirements of this chapter.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

"Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock in a corporation.

"Professional geologist" means a person who is certified pursuant to Title 54, Chapter 30, § 54-9645 § 54.1-1403 of the Code of Virginia.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface property and mineral property within the permit area and the area covered by underground workings.

"Public building" means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public road" means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) for which there is substantial (more than incidental) public use.

"Publicly-owned park" means a public park that is owned by a federal, state or local governmental entity.

"Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings under the Small Operator Assistance Program and which meets the standards of § 480-03-19.795.10.

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"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter 19) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area of surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure or roads within the immediate mining pit area, excess spoil fills, or coal

processing waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond" as provided by Part 480-03-19.801 means

(a) for an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to \$1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.

"Significant forest cover" means an existing plant community consisting predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air, or water resources" means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under § 45.1-245

B of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

- (a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;
- (b) Timber management and silviculture;
- (c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;
- (d) Scenic, historic, archaeological, esthetic, fish, wildlife, plants or cultural interests.

"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h.). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are

- (a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;
- (b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;
- (c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C

horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in § 480-03-19.785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the division after consideration of soil, climate, and other characteristics of a region or the state.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Support facilities" means those facilities resulting from, or incident to, an activity identified in paragraph (a) of the definition of "surface coal mining operations" in this section and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage

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facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads.

"Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"Surface coal mining operations" means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § 45.1-233 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on August 3, 1977.

"Surface mining activities" means those surface coal

mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in § 45.1-229(L) of the Act.

"Surety bond" means an indemnity agreement in a sum certain payable to the Commonwealth of Virginia, Commissioner - Division of Mined Land Reclamation, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the division to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the division to remain as part of the approved postmining land use.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the

right to conduct surface coal mining operations under a permit issued by the division.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or *"ground water in use"* means all ground water which is reasonably able to be used.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Valid existing rights" means:

(a) Except for haulroads, that a person possesses a valid existing right for an area protected under § 45.1-252(D) of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haulroads,

(1) A recorded right of way, recorded easement or

a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of § 45.1-252(D) of the Act after August 3, 1977, valid existing rights shall be found if-

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

(2) The prohibition caused by § 45.1-252(D) of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this definition applies shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful violation" means an act or omission which violates the Act, this chapter, or any permit condition required by the Act, or this chapter, committed by a person who intends the result which actually occurs.

* * *

§ 480-03-19.773.15. Review of permit applications.

(a) General.

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(1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under § 480-03-19.773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(b) Review of violations.

(1) The Division shall determine whether any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If the Division finds that the applicant does have such current violations, it shall require the applicant, before the issuance of the permit, to either *Based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the Federal Act and § 45.1-246 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the federal act, this chapter, or any other law, rule or regulation referred to in this paragraph. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to § 480-03-19.843.12 or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:*

(i) Submit to the division proof that the current

violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

~~(ii) Establish for the Division that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 480-03-19.775.13 either denies a stay applied for in the appeal or affirms the violation, then the applicant shall promptly submit the proof required under paragraph (b)(1)(i) of this section.~~

~~(2) The Division may issue a conditional permit pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section.~~

~~(3) If the Division finds that the applicant, or the permittee specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application shall not be granted. Before such a finding becomes final, the applicant or permittee shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 480-03-19.775.11.~~

~~(ii) Establish for the division that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 480-03-19.775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under paragraph (b)(1)(i) of this section.~~

~~(2) Any permit that is issued on the basis of proof submitted under paragraph (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section, shall be conditionally issued.~~

~~(3) If the division makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing~~

on the determination as provided for in § 480-03-19.775.11.

(c) Written findings for permit application approval.

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and this chapter.

(2) The applicant has demonstrated that reclamation as required by the Act and this chapter can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is—

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Part 480-03-19.764 and 30 CFR Part 769, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 480-03-19.762 and 480-03-19.764, or subject to the prohibitions or limitations of §§ 480-03-19.761.11 and 480-03-19.761.12.

(4) For mining operations where the private mineral property to be mined has been severed from the private surface property, the applicant has submitted to the division the documentation required under § 480-03-19.778.15(b).

(5) The division has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with §§ 480-03-19.701.11(d) and 480-03-19.773.16, and the applicable performance standards of the initial regulatory program or Subchapter VK.

(7) The applicant has paid all reclamation fees, civil penalty assessments, Pool Bond Fund fees, and anniversary fees, from previous and existing operations as required by this chapter.

(8) The applicant has satisfied the applicable requirements of Part 480-03-19.785.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of §§ 480-03-19.816.111(d) or 480-03-19.817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(11) Surface coal mining and reclamation operations will not adversely affect a private family burial ground. Adversely affecting a private family burial ground shall not include relocation authorized by applicable state law or regulations.

(d) Performance bond submittal.

If the division decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter VJ.

(e) Final compliance review.

After an application is approved, but before the permit is issued, the division shall reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under §§ 480-03-19.778.13(j) and 480-03-19.778.14(d).

* * *

§ 480-03-19.773.17. Permit conditions.

Each permit issued by the division shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to subchapter VJ.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the division otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of this

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chapter.

480-03-19.778.13(c).

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the secretary and the director to—

* * *

§ 480-03-19.773.20 *Improviently issued permits: general procedures.*

(1) Have the right of entry provided for in § 480-03-19.840.12; and

(a) *Permit review.*

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Parts 480-03-19.840 and 480-03-19.842, when the inspection is in response to an alleged violation reported to the division by the private person.

If the division has reason to believe that it improviently issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued, using the criteria in paragraph (b) of this section. Where the division finds that the permit was improviently issued, it shall comply with paragraph (c) of this section.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to—

(b) *Review criteria.*

The division shall find that a surface coal mining and reclamation permit was improviently issued if:

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(1) *Under the violations review criteria of this chapter at the time the permit was issued:*

(2) Immediate implementation of measures necessary to comply; and

(i) *The division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or*

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(ii) *The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and*

(f) As applicable, the permittee shall comply with § 480-03-19.701.11(d), 30 CFR subchapter B, or subchapter VK of this chapter for compliance, modification, or abandonment of existing structures.

(2) *The violation, penalty or fee:*

(i) *Remains unabated or delinquent; and*

(g) The operator shall pay all reclamation fees required by 30 CFR subchapter R for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

(ii) *Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and*

(h) *Within 30 days after a cessation order is issued under § 480-03-19.843.11 or 30 CFR 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the division the following information, current to the date the cessation order was issued, or notify the division in writing that there has been no change since the immediately preceding submittal of such information:*

(3) *Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of this chapter at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.*

(1) *Any new information needed to correct or update the information previously submitted to the division by the permittee under § 480-03-19.778.13(c); or*

(c) *Remedial measures.*

If the division, under paragraph (b) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improviently issued, it shall use one or more of the following remedial measures:

(2) *If not previously submitted, the information required from a permit applicant by §*

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(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(4) Rescind the permit under § 480-03-19.773.21.

* * *

§ 480-03-19.773.21. Improvidently issued permits: rescission procedures.

If the division, under § 480-03-19.773.20(c)(4), elects to rescind an improvidently issued permit, it shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the division under § 480-03-19.773.20(b) and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the division finds, that:

(1) The finding of the division under § 480-03-19.773.20(b) was erroneous;

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee:

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the division; and

(c) Right to appeal. The permittee may file an appeal for administrative review of the notice under §

9-6.14:1 et seq. of the Code of Virginia.

* * *

PART 480-03-19.778. Permit applications. Minimum requirements for legal, financial, compliance, and related information.

§ 480-03-19.778.1. Scope and purpose.

This part establishes the minimum legal, financial, compliance, and informational requirements for permit applications for surface coal mining and reclamation operations.

§ 480-03-19.778.13. Identification of interests.

An application shall contain the following information, except that the submission of a social security number is voluntary:

(a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(b) Names, addresses, and telephone numbers of the applicant, the operator (if different from the applicant), and the applicant's resident agent who will accept service of process.

(c) for applicants other than single proprietorships, where applicable:

(1) Name and address of each officer, partner, principal, principal shareholder, and director or other person performing a function similar to a director.

(2) All names under which the applicant, partner, or principal shareholder operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of application.

(d) A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in paragraph (c)-(2) of this section. Such statement shall provide permit or application numbers or other identifiers and the identity of the regulatory authority for each operation listed.

(b) The name, address, telephone number and, as applicable, social security number and employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent; and

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(3) Person who will pay the abandoned mine land reclamation fee.

(c) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 480-03-19.700.5, as applicable:

(1) The person's name, address, social security number and employer identification number;

(2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(3) The title of the person's position, date position was assumed, and when submitted under § 480-03-19.773.17(h), date of departure from the position;

(4) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 480-03-19.700.5, the operation's:

(1) Name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(e) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(f) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(g) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(h) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to state law shall be held in confidence by the division, as provided under § 480-03-19.773.13(d)(3)(ii).

(i) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities.

This list shall identify each license and permit by--

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(j) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d) of this section.

(k) The applicant shall submit the information required by this section and by § 480-03-19.778.14 in any prescribed OSM format that is issued.

* * *

§ 480-03-19.778.14 Violation information.

Each application shall contain the following information:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has --

(1) Had a federal or state coal mining permit suspended or revoked in the five years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond at any time.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to

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in paragraphs (a)(1) and (2) of this section has occurred, including—

- (1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;
- (2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;
- (3) The current status of the permit, bond, or similar security involved;
- (4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- (5) The current status of the proceedings.

(c) A list of all violation notices received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with any surface coal mining and reclamation operation during the 3 year period preceding the application date, for violations of any provision of the Act, or of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection. The application shall also contain the following information about each violation notice:

(1) The date of issuance of identity of the issuing regulatory authority, department, or agency.

(c) For any violation of a provision of the Federal Act or this chapter, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(1) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority,

department or agency.

- (2) A brief description of the violation alleged in the notice;
- (3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in paragraph (c) of this section to obtain administrative or judicial review of the violation;
- (4) The current status of the proceedings and of the violation notice; and
- (5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

(d) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

* * *

PART 480-03-19.843. Enforcement procedures.

§ 480-03-19.843.11 Cessation orders.

(a)(1) An authorized representative of the director shall immediately order a cessation of a coal exploration or a surface coal mining and reclamation operation or of the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which:

- (i) Creates an imminent danger to the health or safety of the public; or
- (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, unless such operations:

- (i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

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(ii) Were conducted lawfully without a permit under this chapter because no permit under this chapter has been required for such operations by the division.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the director shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under § 480-03-19.843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraph (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, including a schedule for meeting any interim steps, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the director, or until the order expires pursuant to § 45.1 -245(D) of the Act and § 480-03-19.843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the director may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by the permittee's lack of diligence.

(f) An authorized representative of the director shall terminate a cessation order by written notice to the permittee when the representative determines that all

conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties under Part 480-03-19.845 for those violations.

(g) Within 60 days after issuing a cessation order, the division shall notify in writing any person who has been identified under §§ 480-03-19.773.17(h) and 480-03-19.778.13(c) and (d) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

* * *

§ 480-03-19.843.13. Suspension or revocation of permits. *Show Cause Order : pattern of violations.*

(a)(1) The director shall issue a show cause order to a permittee requiring justification as to why his permit and right to mine under the Act should not be suspended or revoked, if the director determines that a pattern of violations of any requirements of the Act, this chapter, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee's willfull or unwarranted failure to comply with those requirements or conditions, or if the permittee failed to pay the final civil penalty assessment as required by § 480-03-19.845.20. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The director may determine that a pattern of violations exists or has existed based upon two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, or the permit during three or more inspections of the permit area within any 12-month period. If, after such review, the director determines that a pattern of violations exists or has existed, he shall issue a show cause order as provided in paragraph (a)(1) of this section.

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(4)(i) In determining the number of violations within any 12-month period, the director shall consider only violations issued as a result of an inspection carried out pursuant to §§ 480-03-19.840.11, 480-03-19.842.11 and 480-03-19.842.12.

(ii) The director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his discretion under paragraph (a)(2) of this section, except as evidence of the "willful" or "unwarranted" nature of the permittee's failure to comply.

(5) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the division shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue a show cause order as appropriate pursuant to § 480-03-19.845.15(b)(2).

(b) The permittee shall have 15 days from receipt of the show cause order to file an answer and request a formal public hearing in writing. The director shall give 30 days written notice of the date, time and place of the hearing to the permittee, and any intervenor. The public hearing shall be conducted in accordance with § 9-6.14:12 of the Virginia Administrative Process Act. The director shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the division's Big Stone Gap office.

(c) Within 30 days after the hearing, the Hearing Officer shall issue a written decision as to whether a pattern of violations exists, and, if appropriate, an order. The decision and order shall be final, subject to the review and reconsideration by the director or his designee provided in paragraph (e) below. If the decision and order revoke or suspend the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(d) Within 14 days after the issuance of a decision or order, the permittee, or any person who participated in the hearing and who has an interest which is or may be adversely affected by the hearing officer's decision may appeal to the director, or his designee (who shall not be

the same person who issued the show cause order) for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, made within 14 days of the hearing officer's decision, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further arguments, and may also after considering the record, remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(e) All requests for hearing before a hearing officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a hearing officer's final decision or a final decision on review and reconsideration, shall be filed with the Commissioner, Division of Mined Land Reclamation, Drawer U, Big Stone Gap, Virginia, 24219.

NOTICE: The forms used in administering the Coal Surface Mining Reclamation Regulations are not being published due to the large number, however, the name of each form is listed below. The forms are available for inspection at the Department of Mines, Minerals and Energy, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Form DMLR-PS-034D - Application for a Coal Surface Mining and Reclamation Permit and Description Guide for Preparation of an Application for a Coal Surface Mining and Reclamation Permit.

Form DMLR-PS-034 - Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination System (NPDES).

Form DMLR-PS-240 - Affidavit.

Form DMLR-PS-241 - Affidavit.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-08-01. Virginia Energy Assistance Program.

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

Public Hearing Date: April 26, 1991 - 10 a.m.

(See Calendar of Events section for additional information)

Summary:

Proposed Regulations

The proposed amendment changes the Cooling Assistance start date to July 1.

VR 615-08-1. Virginia Energy Assistance Program.

PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used herein, shall have the following meaning unless the context indicates otherwise:

“Department” means the Department of Social Services.

“Disabled person” means a person receiving Social Security disability, Railroad Retirement Disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

“Elderly person” means anyone who is 60 years of age or older.

“Energy-related,” “weather-related,” or *“supply shortage emergency”* means a household has: no heat or an imminent utility cut-off; inoperable or unsafe heating equipment; major air infiltration of housing unit; or a need for air conditioning because of medical reasons.

“Household” means an individual or group of individuals who occupies a housing unit and functions as an economic unit by: purchasing residential energy in common (share heat); or, making undesignated payments for energy in the form of rent (heat is included in the rent).

“Poverty guidelines” means the Poverty Income Guidelines as established and published annually by the Department of Health and Human Services.

“Primary heating system” means the system that is currently used to heat the majority of the house.

“Resources” means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of \$900, or any other similar resource which can be liquidated in not more than 60 days.

PART II. FUEL ASSISTANCE.

§ 2.1. The purpose of the Fuel Assistance component is to provide heating assistance to eligible households to offset the costs of home energy that are excessive in relation to household income.

A. Eligibility criteria.

1. Income limits. Maximum income limits shall be at or below 130% of the Poverty Guidelines. In order to be eligible for Fuel Assistance, a household's income must be at or below the maximum income limits.

2. Resource limits. The resource limit for a household containing an elderly or disabled person shall be \$3,000. The resource limit for all other households shall be \$2,000. In order to be eligible for Fuel Assistance, a household's resources must be at or below the amount specified.

3. Alien status. Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual.

B. Resource transfer.

Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for Fuel Assistance.

Compensation that is adequate means goods, services or money that approximates the value of the resources.

This policy does not apply if any of the following occur:

1. The transfer was not done in an effort to become eligible for Fuel Assistance;
2. The resource was less than the allowable resource limit;
3. The disposition or transfer was done without the person's full understanding.

§ 2.2. Benefits.

Benefit levels shall be established based on income in relation to household size, fuel type, and geographic area, with the highest energy need.

Geographic areas are the six climate zones for Virginia recognized by the National Oceanic and Atmospheric Administration and the United States Department of Commerce. The six climate zones are: Northern, Tidewater, Central Mountain, Southwestern Mountain, Eastern Piedmont, and Western Piedmont.

Each year, the Division of Energy within the Department of Mines, Minerals and Energy will supply data on the average costs of various fuels.

Each year the benefit amounts for each geographic area shall be determined by the following method:

A. A projection will be made of the number of households who will apply for Fuel Assistance. The projection will be based on the number of households who applied the previous year increased by the additional number of people who applied the year before.

B. An average grant per household will be determined based on the estimated amount of funds that will be available for benefits.

$$\frac{\$ \text{ available}}{\text{no. of households}} = \text{average grant}$$

C. The benefits for each geographic area will be determined by using the average grant as a base figure and obtaining the highest and lowest benefits by using a ratio for each area based on degree days and the cost of various fuel types.

D. The generic benefit amount for statewide use will be determined by averaging the regional average benefit amounts for each fuel type.

PART III. CRISIS ASSISTANCE.

§ 3.1. The purpose of the Crisis Assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the Fuel Assistance component or other local resources.

A. Eligibility criteria.

In order to be eligible for Crisis Assistance, a household shall meet the following criteria:

1. All of the Fuel Assistance criteria as set forth in Part II, § 2.1;
2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;
3. Other resources cannot meet the emergency (including Fuel Assistance);
4. Did not receive Crisis Assistance during the current federal fiscal year: November 1 - March 15.

B. Benefits.

An eligible household can receive no more than \$200 for Crisis Assistance during any federal fiscal year, unless the assistance is for the rebuilding or replacement of heating equipment or purchase of heating equipment where none exists, in which case the maximum amount of assistance shall be \$700.

The following forms of assistance shall be provided:

1. Repairs, replacement or rebuilding of inoperable or

unsafe heating equipment.

2. Payment of electricity when it is needed to operate the primary heating equipment. Payment will be limited to \$200 maximum. Assistance may be provided once every five years.

3. A one-time-only payment per fuel type of a heat-related utility security deposit.

4. Providing space heaters.

5. Providing emergency shelter.

PART IV. COOLING ASSISTANCE.

§ 4.1. Cooling Assistance program is an optional component of the Energy Assistance Program that is designed to provide help to persons medically in need of cooling assistance due to the heat.

Local agencies who choose this option will be given a separate allocation that will be based on a percentage of their crisis allocation and will provide the assistance no earlier than ~~June 15~~ July 1 through no later than August 31.

A. Eligibility criteria.

In order to be eligible for cooling assistance, a household must meet all of the fuel assistance eligibility criteria and must be in critical medical need of cooling.

B. Benefits.

The assistance is limited to: no more than \$200 for repairing or renting a fan or air conditioner, purchasing a fan, or paying an electric bill or security deposit; or no more than \$400 for purchasing an air conditioner.

PART V. ADMINISTRATIVE COSTS.

§ 5.1. Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of 7.0% of the program grant allocation.

VIRGINIA RACING COMMISSION

Title of Regulation: VR 662-03-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: April 17, 1991 - 9:30 a.m.
(See Calendar of Events section for additional information)

Proposed Regulations

Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. The proposed regulation sets forth the duties, qualifications and responsibilities of participants in race meetings licensed by the commission.

VR 662-03-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.

§ 1. Generally.

No person shall participate in any horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting or pari-mutuel wagering of the race meeting unless the person possesses a permit from the commission and complies with the provisions of the Act and the regulations of the commission. Permits issued by the commission are not transferable.

A. Application for permit.

A person desiring to obtain a permit to participate in horse racing, with pari-mutuel wagering, shall make an application for a permit on a form prescribed by the commission. The application shall be accompanied by a fee prescribed by the commission and the cost of fingerprinting. The applicant shall be photographed. The applicant shall also be fingerprinted upon making his initial application in the Commonwealth and at least once every five years thereafter. The application shall be verified by the oath or affirmation of the applicant.

B. Fee schedule.

Before submitting an application for a permit as a participant, the applicant shall consult the fee schedule of the Virginia Racing Commission to ascertain the applicable fee, make out a check or money order payable to the Virginia Racing Commission or pay in cash the full amount of the fee, and submit the fee with the application.

C. Provisional permit.

Pending the completion of a background investigation into the qualifications and fitness of an applicant for a permit, the commission shall grant a provisional permit in accordance with the following provisions:

1. The applicant shall be permitted to participate in horse racing to the extent allowed by the permit for which application was made;
2. The applicant, in the exercise of reasonable care and diligence, could not have made application in time for a decision to be made on the applicant's

qualifications and fitness; and

3. The commission has no reason to believe that the applicant is ineligible for the permit for which application was made.

D. Termination of provisional permit.

A provisional permit shall terminate upon a decision of the commission to approve or deny the application for a permit, or 120 days after the grant of the provisional permit, whichever occurs first. A provisional permit shall carry no presumption of qualifications or fitness, and may be terminated summarily by the commission for cause.

E. Recommendation by stewards.

The stewards, employed as racing officials by the commission, shall promptly consider an application, and shall approve or deny the application based on the information in the application and all other information before them, including any investigation they deem appropriate. If an application is approved by the stewards, the permit shall be valid for one year.

F. Denial of application.

The stewards shall deny the application, if they find that the approval of a permit for the person would not be in the best interests of the people of the Commonwealth, or the horse racing industry of the Commonwealth, or would reflect adversely on the honesty and integrity of the horse racing industry in the Commonwealth, or that the applicant:

1. Has knowingly made a false statement of a material fact in the application, or has deliberately failed to disclose any information requested by the commission;
2. Is or has been guilty of any corrupt or fraudulent practice or conduct in connection with any horse race meeting in this or any other state;
3. Has knowingly failed to comply with the provisions of the Act or the regulations of the commission;
4. Has had a permit to engage in activity related to horse racing denied for just cause, suspended or revoked in any other jurisdiction, and such denial, suspension or revocation is still in effect;
5. Is not qualified to perform the duties required for the permit sought; or
6. Has been convicted in any jurisdiction of a misdemeanor or felony involving unlawful conduct or wagering, fraudulent use of a credential, unlawful transmission of information, touting, bribery, administration or possession of drugs or any misdemeanor or felony considered by the commission

to be detrimental to horse racing in the Commonwealth.

G. Denial is final.

The denial of an application by the stewards as a participant in horse racing shall be final unless an appeal is made by the applicant under the provisions of these regulations.

H. Renewal of permit.

A holder of a currently valid permit may renew the permit annually by making application for a renewal on a form prescribed by the commission. The application for a renewal of a permit shall be accompanied by a fee prescribed by the commission. The applicant may be photographed with each application for a renewal.

I. Knowledge of regulations.

A holder of a permit shall be familiar with and knowledgeable of the regulations of the commission. Every holder of a permit is presumed to know the regulations.

J. Reporting violations.

A holder of a permit shall report immediately to the stewards every observed violation of these regulations as well as all violations of state and federal laws during the race meeting.

K. Multiple participation.

A holder of a permit may participate in horse racing in more than one capacity, with the exception of those capacities specifically prohibited by these regulations. A holder of a permit shall declare, in writing on a form prescribed by the commission, his multiple participation in horse racing. The stewards may deny multiple participation where it would, in their discretion, pose a potential conflict of interest. Where approval is granted to a holder of a valid permit, the applicable fee shall be paid by the participant.

L. Employment of unauthorized participants.

A holder of a permit shall not employ for participation within the enclosure any person who does not possess the appropriate permit issued by the commission or has not made application for the appropriate permit.

M. Financial responsibility.

A holder of a permit, who obtains food, shelter, medicine, transportation, veterinary services or other goods and services for himself or for others shall be responsible for paying for those goods and services. The stewards shall neither be obligated to collect debts nor intervene where there is a dispute over a debt, unless in receipt of a judgment from a duly constituted court in the

Commonwealth.

N. Possession of permit.

A holder of a permit shall have in his possession at all times his permit issued by the commission and shall be responsible for its safekeeping. The holder shall display his permit to gain entry to the enclosure or upon the request of appropriate racing officials, commission personnel or security personnel.

O. Duplicate permit.

A holder of a permit shall report immediately to the stewards the loss of his permit and immediately make application for a duplicate. The stewards shall notify the appropriate security personnel of the loss of the permit.

P. Misuse of permit.

A holder of a permit shall not allow another person to use his permit for the purpose of obtaining any benefits or privileges pertaining to the permit.

Q. Search and seizure.

An applicant for a permit shall consent upon application and for the duration of the permit, if issued, to personal inspections (searches) of the applicant, inspections (searches) of the applicant's personal property, and inspections (searches) of the premises and property related to his participation in a race meeting by persons authorized by the commission, and to seizure of such property as is determined by the commission's designee conducting the search to be in violation of Chapter 29 of Title 59.1 of the Code of Virginia, or these regulations. The following provisions shall apply to searches and seizures:

1. Any drug, stimulant, narcotic, controlled substance, drug paraphernalia, hypodermic needle, hypodermic syringe, battery or other electrical or mechanical appliance or any other device or substance which could be used to affect the speed or action of a horse, or any other device prohibited by these regulations that is in the possession of an applicant, a holder of a permit or a holder of a provisional permit may be seized;

2. Commission personnel have the right to enter into, or upon buildings, stables, rooms (other than residences), private vehicles or other places within the enclosure, and shall examine them, and inspect and examine personal property and effects of a holder of a permit or holder of a provisional permit for the purpose of determining that the items listed in subdivision 1 of this subsection are not in the possession of a permit holder, applicants or holders of provisional permits unless authorized by Chapter 29 of Title 59.1 or these regulations; and

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3. In addition, commission personnel shall visit, investigate, and have free access to the office, track, facilities, or other places of business of any licensee or permit holder and may compel the production of any of the books, documents, records, or memoranda of any licensee or permit holder for the purpose of satisfying themselves that Chapter 29 of Title 59.1 and these regulations are being strictly complied with.

4. Failure to submit to any inspection or search described above or to any production of documents or seizure of property resulting therefrom, may subject a licensee, holder of a permit or a holder of a provisional permit to disciplinary action. In the event that such licensee or permit holder, applicant, or holder of a provisional permit refuses to submit, the following procedure shall apply:

Such refusal shall be immediately reported to the stewards by the person attempting to conduct the search. Such refusal, and the basis therefor, shall be provided in writing to the stewards by the permit or provisional permit holder or applicant and shall state the date, time and circumstances of the attempted search, and his reason(s) for refusing to submit to it. Upon receipt of such report, the stewards may take appropriate disciplinary action in conformity with the provisions of these regulations including suspension or revocation of the permit or referral to the appropriate law-enforcement authorities but in no event shall the search or seizure proceed or the permit holder or any of his property be detained at that time.

5. The foregoing shall not preclude commission personnel from conducting searches and seizures when they have reasonable suspicion that a person is in the act of violating a regulation or evidence of a violation of a regulation may be destroyed, in which event the provisions of these regulations dealing with consent, refusal to consent, scope of search and disciplinary action shall apply.

R. Workers' compensation.

An applicant for a permit, where the person acts as an employer of three or more persons within the enclosure, shall purchase and maintain workers' compensation insurance, and shall submit, with his application, a copy of the declaration page or certificate of insurance. Should workers' compensation insurance coverage be terminated or canceled, the permit of the person may be suspended or revoked.

S. Supervision of employees.

A holder of a permit who is an employer shall supervise his employees so that their participation in horse racing is in accordance with these regulations, and shall be held jointly responsible for the actions of his employees as they relate to racing matters.

T. Human drug testing.

The use, possession or transportation of any controlled substance or drug as those terms are defined in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) is prohibited unless the controlled substance or drug was obtained pursuant to a valid prescription or order from a duly licensed physician who is acting in the course of his professional practice or is otherwise authorized by these regulations. It shall be the responsibility of the holder of a permit to provide proof that he is using, possessing or transporting the controlled substance or drug pursuant to a valid prescription or order from a duly licensed physician or that such use, possession or transportation is otherwise authorized by these regulations.

In addition, the following provisions shall apply to the use or possession of controlled substances or drugs:

1. Any apprentice jockey, assistant starter, assistant trainer, clerk of scales, driver of starting gate, exercise rider, farrier, groom, hotwalker, identifier, jockey, outrider, owner, paddock judge, patrol judge, placing judge, pony rider, starter, steward, trainer, valet, veterinarian or veterinarian's assistant at any horse racing facility licensed by the commission may be subjected by the commission or its designee to a urine test or other fluid test including a blood test for the purpose of detection of the presence of controlled substances, in the manner prescribed below:

a. At least once per week during the course of every unlimited race meeting, the executive secretary of the commission, or his designee, shall direct that the above-described testing be conducted. The day of each such testing shall be selected by the executive secretary or his designee at random and shall not be announced to the persons affected until the day so selected shall have arrived; and

b. Each sample shall be provided in the presence of the licensee's physician or other representative appointed by the executive secretary or his designee and in sufficient quantity to provide a split sample whenever possible. Such sample(s) shall be immediately sealed and tagged on the form provided by the commission. Evidence of such sealing shall be indicated by the signature of the tested permit holder, but the portion of the form which is provided to the laboratory for analysis shall not identify the individual permit holder by name. Only laboratories approved by the commission may be used in obtaining analysis reports or urine or other specimens. The commission and the stewards shall receive reports directly from the laboratory. If the permit holder so requests in writing to the stewards within 48 hours of notice of a positive lab report on the test sample submitted, the second portion shall be sent for further testing to a drug testing laboratory

designated and approved by the commission. All costs for the transportation and testing of the second sample portion shall be the financial responsibility of the requesting permit holder, and payment shall be due from the requesting permit holder within 30 days of receipt of notice of the costs. The licensee's physician or other representative appointed by the executive secretary or his designee shall have overall responsibility for the preservation, storage and safeguarding of the second sample portion.

2. Notwithstanding the foregoing, any steward, acting with reasonable suspicion, may direct any holder of a permit, whether or not listed in the categories above, to submit a specimen of urine, or to submit to any other fluid test including a blood test for the detection of controlled substances or drugs, in which event the provisions of these regulations dealing with collection of sample(s), failure to provide a sample, positive sample test(s), and disciplinary action shall apply.

3. The presence in a sample of metabolites of opoid, barbiturate, cannabis, cocaine, amphetamine, hallucinogen, phencyclidine-type drugs, volatile solvents or volatile nitrates, or other mood-altering or dependency-causing controlled substances or drugs will be considered a positive test. A positive test result shall be reported, in writing, to the executive secretary or his designee, who shall notify the permit holder involved in writing as quickly as possible.

4. In the event of a positive test, the following shall also apply:

a. For an initial positive test, a holder of a permit shall undergo a professional evaluation, at his own expense, by a physician approved by the stewards. If the evaluation indicates that the person's condition is nonaddictive and not detrimental to the best interests of horse racing, the person shall be allowed to participate in horse racing, after producing a negative test and agreeing to undergo random testing for a period of no greater than six months at the discretion of the stewards;

b. If the evaluation indicates the person's condition is addictive or detrimental to the best interests of horse racing, the person shall not be allowed to participate in horse racing until he can produce a negative test, has successfully completed a drug rehabilitation program acceptable to the commission, and agrees to undergo random testing for a period of not greater than six months at the discretion of the stewards; and

c. For a second positive test, a holder of a permit shall be suspended indefinitely by the stewards and may only apply for reinstatement after having successfully completed a drug rehabilitation

program acceptable to the commission and agreeing to undergo random testing for a period of not greater than one year at the discretion of the stewards.

5. Notwithstanding the foregoing, a holder of a permit whose sample is positive may be subject to disciplinary action including but not limited to revocation or suspension of his permit.

U. Human alcohol testing.

On any racing day, any holder of a permit may not have present within his system an amount of alcohol which would constitute being under the influence of alcohol, defined as .10% alcohol content or more, or being impaired, defined as between .09% and .05% alcohol content. In addition, the following provisions shall apply to the consumption of alcoholic beverages:

1. The commission hereby adopts breath testing as its approved method of testing for the presence of alcohol in humans and adopts the following procedure for such testing:

a. Any apprentice jockey, assistant starters assistant trainer, clerk of scales, driver of starting gate, exercise rider, farrier, groom, hotwalker, identifier, jockey, outrider, owner, paddock judge, patrol judge, placing judge, pony rider, starter, steward, trainer, valet, veterinarian or veterinarian's assistant at any horse racing facility licensed by the commission may be required to take a breath alcohol test no later than one hour before his participation in horse racing commences;

b. Testing devices shall be selected by the commission from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the Federal Register from time to time by the National Highway Traffic Safety Administration (NHTSA), United States Department of Transportation;

c. Each device shall be properly maintained and shall be calibrated by the use of calibrating unit listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended) with sufficient frequency to ensure the accuracy of the device (within plus or minus .01 percent), but not less frequent than provided in the manufacturers instructions;

d. Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of the breath alcohol calibrating unit; and

e. Tests shall be conducted in accordance with

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procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

2. Notwithstanding the foregoing, any steward, acting with reasonable suspicion, may direct any holder of a permit, whether or not listed in the categories above, to submit to a breath alcohol test, in which event the provisions of these regulations dealing with refusal to undergo a breath test, positive test(s), and disciplinary action shall apply.

3. A holder of a permit who is impaired shall not participate in horse racing on that day, but for the first occurrence, shall not be subject to further disciplinary action; a second or subsequent occurrence shall subject such permit holder to disciplinary action.

4. A holder of a permit who is under the influence of alcohol or refuses to take a breath alcohol test at the direction of the stewards, is subject to disciplinary action.

V. Reciprocity of rulings.

Any person who has been issued a permit by the commission and has a permit or license to engage in activity related to horse racing denied for just cause, suspended or revoked in any other jurisdiction, and such denial, suspension or revocation is still in effect shall not be permitted to participate in horse racing with pari-mutuel wagering in the Commonwealth of Virginia.

§ 2. Practicing veterinarian.

A. Qualifications.

A holder of a permit allowing the person to participate as a practicing veterinarian shall possess a full and unrestricted license from the Virginia Board of Veterinary Medicine.

B. Prohibitions.

A practicing veterinarian shall be prohibited from engaging in the following activities:

1. Owning, directly or indirectly, entirely or a portion of any horse racing at the race meeting where he is practicing veterinary medicine;

2. Wagering on the outcome of any race, either directly or indirectly, at the race meeting where he is practicing veterinary medicine; and

3. Furnishing any injection device, injectable substance or any other medication to another permit holder without the written permission of the stewards.

C. Duties.

In the exercise of his duties, the practicing veterinarian shall:

1. Treat all horses under his care in a humane manner and report all instances of animal abuse or neglect immediately to the stewards;

2. Report immediately to the commission veterinarian and stewards any illness in a horse presenting unusual or unknown symptoms;

3. Submit daily written reports to the commission veterinarian of any treatment or medication prescribed or administered to a horse and the reports shall include the name of the horse, its trainer, the treatment performed, medication prescribed or administered, the dosage, and time and date of administration;

4. Retain duplicate copies of bills or statements issued to trainers or owners for at least one year;

5. Make available to the commission veterinarian, stewards or other commission personnel, upon request, copies of any written records or billing to trainers or owners; and

6. Use only single-use disposable syringes and infusion tubes, and whenever using a hypodermic needle or syringe, the practicing veterinarian shall destroy the needle and syringe and remove it from the enclosure.

§ 3. Pharmaceutical representative.

A person shall submit an application to participate in horse racing as a pharmaceutical representative. A pharmaceutical representative may sell only those substances authorized by the Virginia Drug Control Act and horse care products within the enclosure. A pharmaceutical representative shall submit a list of all medications or preparations to the commission veterinarian for approval prior to their sale, and sell only those approved by the commission veterinarian. The pharmaceutical representative shall only sell medications and preparations to practicing veterinarians and vendors of horse care products, and shall not sell, either directly or indirectly, to other permit holders.

§ 4. Horse owner.

A. Generally.

No horse may start in a race at a race meeting licensed by the commission unless the owner, or part owner who has an interest of 5.0% or more in the horse, has been issued a permit by the commission, or unless an application has been submitted by the owner or part owner, or by their trainer or authorized agent, and the approval of the stewards has been obtained. If the trainer or authorized agent submits a partially completed application on behalf of an owner, the applicant shall

complete the application within 30 days. The applicant shall be subject to disciplinary action for failure to complete the application. In any event, all purse moneys earned shall be held until the application is completed.

B. Husband and wife.

For the purposes of these regulations, a husband and a wife shall not be considered a partnership when they enter their horse or horses as a single entity. However, a husband and wife shall make separate applications for permits as owners.

C. Registration of ownership.

Every certificate of registration or eligibility paper shall reflect the true ownership of the horse, and the ownership of the horse printed in the daily program shall conform to the ownership listed on the certificate of registration or eligibility paper.

1. Before a horse can start in a race, its true ownership must be recorded with the racing secretary and the appropriate breed registry, e.g., thoroughbred: The Jockey Club; standardbred: United States Trotting Association; quarter horse, American Quarter Horse Association; and arabian: Arabian Horse Registry of America;

2. In the event ownership of a horse is a syndicate, corporation, partnership or other joint venture, the name of the owner, which is printed in the daily program, shall be the person designated as the managing owner; and

3. In the event of a change in ownership of a horse, it shall be the responsibility of the new owner to record the change in ownership with the racing secretary and the appropriate breed registry.

D. Qualifications of owners.

In addition to all of the qualifications applying to all applicants in these regulations, applicants for permits as horse owners shall meet the following additional requirements:

1. Shall be 18 years old or older, if a natural person;
2. Shall present a copy of a declaration page or certificate of insurance for workers' compensation as required by these regulations;
3. Shall own or have under lease a horse eligible to race and shall be able to prove ownership of a horse eligible to race to the satisfaction of the stewards; and
4. Shall designate in writing a trainer who will have care and supervision for each horse.

E. Disclosure of ownership.

All holders of permits allowing them to participate in horse racing as owners shall make full disclosure of the entire ownership of each horse owned by them, and the trainers shall be held jointly responsible for the full disclosure of ownership of all horses under their care. This disclosure shall be in writing and include:

1. All persons, who directly or indirectly, through lien, lease, partnership, corporate stockholding, syndication, or other joint venture, hold any present or reversionary right, title, or interest in the horse;

2. All persons who by virtue of any form of ownership interest might exercise control over the horse or derive benefit from the racing of the horse as well as the degree and type of ownership held in the horse; and

3. The full disclosure shall be made to the racing secretary, with a copy submitted to the stewards, upon the horse's arrival within the enclosure or at the time of entry, whichever event occurs first, and the racing secretary and stewards shall be notified immediately upon any subsequent change in ownership.

F. Joint ownership.

No more than five persons may be issued permits as owners of a single horse. In the event more than five persons own interests in a single horse, through partnership, corporation, syndication or other joint venture, the owners shall designate, in writing, a member of the partnership, corporation, syndication or joint venture to represent the entire ownership and be responsible for the horse as the managing owner. Before the horse may be entered to race, the following requirements must be met:

1. A written designation of a managing owner to represent the entire joint venture must be submitted to the stewards and signed by every person having an interest of 5.0% or more in any horse entered to race, the chief executive officer of any corporation involved, and the general partner of any limited partnership;

2. Each person having an interest of 5.0% or more in a horse shall apply for a permit as an owner;

3. Each person having an interest of less than 5.0% need not apply for a permit as an owner, unless he intends to participate at the race meeting; however, a complete list of names and addresses of persons having an interest of less than 5.0% shall be provided to the stewards for their approval; and

4. A horse shall not be entered where a person, who has any ownership interest in the horse, would be

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ineligible for a permit under these regulations.

G. Estates, partnerships, corporations and other legal entities.

Every estate, partnership, corporation and other legal entity shall make application for a permit to the commission and all parties to the estate, partnership, corporation or legal entity shall also make application to the commission for permits as owners.

1. A written designation of a managing owner to represent the estate, partnership, corporation or other legal entity must be submitted to the stewards and signed by every person having an interest of 5.0% or more in any horse entered to race, by the chief executive officer of any corporation involved, and by the general partner of any limited partnership;

2. The managing owner shall be responsible for submitting to the stewards a copy of the partnership papers or articles of incorporation which shall include the following information:

a. The name or names of the horse or horses involved in the estate, partnership, corporation or other legal entity;

b. The name and address of every person having any interest in the horse or horses involved in the estate, partnership, corporation or other legal entity;

c. The relative proportions of such interests;

d. In whose name the horse or horses shall run, and whose name shall be printed in the daily program;

e. The person who may enter the horse in races;

f. The terms of any contingency, lease or any other arrangement; and

g. All partnership papers, articles of incorporation or other appropriate documents must be signed by all parties to the estate, partnership, corporation or other legal entity.

3. All parties in the estate, partnership, corporation or other legal entity shall be jointly and severally liable for all stakes, fees and other obligations.

H. Leases.

When a horse is held under a lease, the lease agreement must be submitted to the stewards for their approval, and when approved by the stewards, the lease shall be attached to the certificate of foal registration or eligibility certificate. Before the stewards may approve a lease agreement, the following conditions must be fulfilled:

1. The lessee is a permit holder as an owner;

2. The lessor is eligible for a permit;

3. The signatures of the lessors and lessees on the lease agreement are subscribed and sworn to before a notary public;

4. The term of the lease is not less than one year, unless sooner terminated by claim or retirement of the horse;

5. The conditions of the lease specify whether the horse can be entered in a claiming race, and if so, the minimum price for which the horse can be entered, and the name of the payee in the event the horse is claimed;

6. The conditions of the lease specify that upon the horse being claimed, the lease shall terminate and all rights to the horse shall pass to the claimant as a bona fide purchaser;

7. The conditions of the lease divest lessors or sublessors of control or direction of the racing performance of the horse while held under the lease agreement; and

8. The program listing of the lessee would not mislead the public by reason of the absence in the daily program of the name of a person or persons possessing a beneficial interest in the horse.

I. Stable names.

A holder of a permit as an owner may register a "stable name" with the commission. All names that do not reveal the actual identity or identities of the owner or owners of the horse or horses shall be considered stable names. The following conditions shall apply to stable names:

1. In making an application for a stable name, the applicant shall make a full disclosure of all of the parties to the stable name regardless of the proportion of their interest;

2. All parties, who have an interest of 5.0% or more, in the stable name must be holders of permits as owners;

3. If a partnership or corporation is involved in the stable name, then all of the provisions of these regulations applicable to partnerships or corporation must be complied with as well;

4. Any changes in the parties to the stable name must be reported to the racing secretary and the stewards prior to the horse being entered;

5. Any person, who has been a party to a stable

name, may cancel his participation in the stable name upon giving a notarized statement to the stewards and racing secretary, and the notice must be received before time or entry;

6. A stable name shall not be used that is identical to one registered with the commission or with The Jockey Club, the National Steeplechase and Hunt Association, the United States Trotting Association or the American Quarter Horse Association;

7. A stable name shall not be used which is the name of another owner of horses or the name of another prominent person;

8. A trainer may use a stable name only if he is a party to the stable name and trains all of the horses racing under the stable name;

9. The stable name must be clearly distinguishable from other stable names, and when appearing in the daily program, the stable name must be accompanied by the legal name of owner. If the stable name has more than one owner, one legal name of a party to the stable name must appear followed by the term "et al";

10. A corporate name may be used as a stable name, but under no circumstances shall a stable name be used for advertising purposes; and

11. A stable name may be canceled when all parties to the stable name submit to the stewards and racing secretary written notice of the cancellation, and a stable name may be changed by registering a new stable name with the commission.

J. Racing colors.

For thoroughbred, jump and other flat races, a holder of a permit as an owner shall register a set of racing colors when submitting an application for an owner's permit. The following provisions shall regulate the registration of racing colors:

1. Owners shall be responsible for designing and providing racing colors, consisting of jackets and caps of distinctive colors and patterns, to be worn by jockeys during a race;

2. Racing colors shall be registered annually by the owner;

3. Racing colors that are not readily distinguishable from those already registered by the commission or from those already registered with The Jockey Club or the National Steeplechase and Hunt Association shall be prohibited;

4. Racing colors including advertising, promotional, cartoon symbols or words are prohibited;

5. No jockey may wear the racing colors except those registered by the owner; however, in emergency situations, the jockey may wear substitute racing colors with the permission of the stewards; and

6. Owners and trainers shall be jointly responsible for providing the clerk of scales with racing colors that are neat, clean and in good repair.

K. Registration requirements.

No owner may start his horse in any race unless the certificate of registration or eligibility certificate has been presented to the racing secretary, and the registration documents are properly completed showing the name, color, sex, age, pedigree and true ownership of the horse.

L. Change of trainer.

An owner may make a change in a trainer of his horse or horses upon the submission of a written notice to the stewards and the racing secretary.

M. Prohibitions on owners.

No owner shall enter a horse that is ineligible. Only a practicing veterinarian possessing the appropriate permit may treat a horse that is entered in a race on which pari-mutuel wagering shall be conducted.

§ 5. Authorized agent.

A holder of a permit allowing the person to participate in horse racing as an owner may employ an authorized agent to act on his behalf in all matters pertaining to racing and ownership of horses within the enclosure. The following provisions shall apply to authorized agents:

1. The owner shall submit to the stewards a signed, notarized statement authorizing the agent, specifying the powers of the agent, and specifying whether or not the agent is empowered to receive money from the horsemen's account;

2. The authorized agent shall apply for the appropriate permit, and shall apply separately for permits for each owner represented;

3. A copy of the owner's signed, notarized authorization shall be submitted by the owner to the racing secretary, horsemen's bookkeeper and attached to the application for the permit;

4. The owner shall be jointly responsible for all acts and omissions of the authorized agent while serving on behalf of the owner in a racing matter; and

5. An owner may revoke the agency by submitting written notification to the stewards.

§ 6. Bloodstock agent.

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A person shall submit an application for a permit to participate in horse racing as a bloodstock agent who for gain, gratuity, commission or reward in either money or goods, acts as an agent for the sale or purchase of any horse, which is not his own, stabled within the enclosure and eligible to race at a meeting licensed by the commission. The following provisions shall apply to bloodstock agents:

1. All bloodstock agents shall apply for the appropriate permit before participating in any transaction involving a horse stabled within the enclosure and eligible to race;

2. A bloodstock agent who participates in a transaction where any warranty of soundness, condition or racing ability is expressed or implied shall submit to the stewards, within five days of the date of the sale, a written statement of the warranty setting forth the warranties expressed or implied, and signed by the seller and buyer or by the bloodstock agents acting on their behalf;

3. A bloodstock agent who participates in a transaction, which includes any lien upon the horse, shall file a written statement within five days of the sale with the stewards; and

4. No bloodstock agent shall either misrepresent any material fact, nor withhold any material fact which he knows, from any person connected with the sale of a horse or misrepresent his personal interest in any horse.

§ 7. Trainer.

A. Generally.

No horse may be entered to race at a race meeting licensed by the commission unless the horse is under the care and supervision of a person holding a permit from the commission as a trainer. A trainer may represent the owner in entering of a horse, declaring the horse out of a race or retaining a jockey.

B. Qualifications.

A permit may be issued to a person to participate in horse racing as a trainer, if the person possesses a currently valid permit as a trainer in another jurisdiction or if the person satisfactorily completes a trainer's test, administered under the supervision of the stewards. A person shall not be issued a permit as a trainer unless he meets the following requirements:

1. The person must be 18 years old or older;
2. Shall present a copy of the declaration page or certificate of insurance for workers' compensation as required by these regulations;

3. The person must be qualified by experience or competence to care for and train racehorses; and

4. The person must have in his charge a horse eligible to race.

C. Trainer's test.

The stewards may require any person, whether or not he holds a currently valid permit from the commission or another jurisdiction as a trainer, to satisfactorily complete a trainer's test to demonstrate that he is qualified by experience or competence to care for and train racehorses. The test shall consist of a written test administered by the stewards and a barn test administered by representatives of the horsemen, under the supervision of the stewards.

D. Prohibitions.

A holder of a permit allowing the person to participate in horse racing as a trainer is prohibited from also participating in horse racing as a jockey or apprentice jockey with the exception of jump races, jockey agent, veterinarian, veterinarian's assistant, equine dentist, farrier, farrier's assistant, or as an employee of the licensee. In addition, a trainer:

1. Shall not train horses under an assumed name or stable name; and

2. Shall not engage in any activity, directly or indirectly, involving the care, supervision or racing of horses other than those he has registered with the racing secretary as being in his charge.

E. Suspension.

All horses in the charge of a trainer whose permit is suspended for more than 10 days or revoked shall not be allowed to race. When a trainer's permit is suspended or revoked, it shall be the responsibility of the owners of the horses to designate in writing to the stewards to whom the responsibilities for training the horses shall be transferred. This written notice shall be presented to the stewards for approval. The stewards, in their discretion, may withhold approval of a transfer of horses to another trainer, if they believe that the transfer of the horses to another trainer would in any way circumvent the intent of the ruling of the commission.

F. Duties.

A person holding a permit allowing him to participate in horse racing as a trainer shall be responsible for the proper care, health, training, safety and protection of horses under his care against administration of all substances foreign to the natural horse, except those specifically permitted by the regulations of the commission. In the exercise of his duties, a trainer shall:

1. Register with the stewards all persons in his employ and ensure that all of his employees have made application for the appropriate permits from the commission within 24 hours of arriving within the enclosure or being employed;

2. Promptly notify the stewards and the licensee's director of security of any employee he discharges;

3. Provide workers' compensation insurance coverage for all of his employees;

4. Register all horses in his charge and present to the racing secretary the certificates of registration, certificates of eligibility or other registration documents;

5. Enter horses, with the permission of the owner, and bear primary responsibility as to the horse's eligibility, weight allowances, racing fitness, proper shoes, bandages, and other equipment;

6. Ensure that the horse is in the paddock at the time prescribed by the stewards;

7. Be responsible, jointly with the owner, for horses he enters as to stakes payments and jockey fees due;

8. Furnish the name of the jockey engaged to ride the horse, if possible, at time of entry, but in no event later than scratch time;

9. Attend the horse in the paddock and supervise the saddling of the horse, and in his absence, provide an assistant trainer or other trainer to attend the saddling of horses and assume responsibility for the horses already entered;

10. Witness himself, or assign one of his employees to witness, the collection of samples of blood, urine, or other bodily substances in the detention barn;

11. Maintain the stable area assigned to his horses in a neat, clean and sanitary condition at all times, and ensure that all fire prevention measures are taken; and

12. Report promptly to the commission veterinarian any serious illness or death of a horse in his charge.

G. Standardbred trainer.

A permit may be issued to a person desiring to participate in horse racing as a trainer of Standardbreds, if the person possesses a currently valid trainer's license from the United States Trotting Association.

H. Steeplechase trainer.

A permit may be issued to a person desiring to participate in horse racing as a trainer of horses utilized

in jump races, if the person possesses a currently valid trainer's license issued by the stewards of the National Steeplechase and Hunt Association or a currently valid permit as a trainer of horses utilized in jump races in another jurisdiction.

I. Substitute trainer.

When a trainer is absent from his stable or the enclosure and a horse under his care is scheduled to race, he must provide a licensed trainer or assistant trainer to assume joint responsibility for the horses he is training. The substitute trainer or assistant trainer shall sign, in the presence of the stewards, a statement accepting responsibility for those horses.

J. Assistant trainer.

A person holding a permit allowing him to participate in horse racing as a trainer may employ an assistant trainer with the approval of the stewards. Any assistant trainer shall be qualified to assume the duties and responsibilities imposed upon the holder of a trainer's permit, and the trainer shall be jointly responsible for the assistant trainer's acts and omissions involving racing matters and these regulations.

K. Trainer responsibility.

The trainer shall be the absolute insurer of, and responsible for, the condition of each horse he enters in a race, regardless of the acts of third parties. A trainer shall not start a horse or permit a horse in his custody, care or control to be started if he knows, or through the exercise of reasonable care he might have known or has cause to believe, that the horse has received a substance foreign to the natural horse, except those specifically permitted by the regulations of the commission. The trainer shall guard, or caused to be guarded, each horse in his charge in a manner and for a period of time before racing so as to prevent any person from administering a substance foreign to the natural horse, except those specifically permitted by the regulations of the commission.

§ 8. Stable foreman.

A person shall submit an application to participate in horse racing as a stable foreman. The person shall meet all of the requirements set forth in these regulations pertaining to participants, and be an employee of a person holding a permit as an owner or trainer. The person's participation in horse racing shall be in accordance with these regulations.

§ 9. Night watchman.

A person shall submit an application to participate in horse racing as a night watchman. The person shall meet all of the requirements set forth in these regulations pertaining to participants, and be an employee of a

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person holding a permit as an owner or trainer. The person's participation in horse racing shall be in accordance with these regulations.

§ 10. Groom.

A person shall submit an application to participate in horse racing as a groom. The person shall meet all of the requirements set forth in these regulations pertaining to participants, and be the employee of a person holding a permit as an owner or trainer. The person's participation in horse racing shall be in accordance with these regulations.

§ 11. Hotwalker.

A person shall submit an application to participate in horse racing as a hotwalker. The person shall meet all of the requirements set forth in these regulations pertaining to participants, and be the employee of a person holding a permit as an owner or trainer. The person's participation in horse racing shall be in accordance with these regulations.

§ 12. Jockey.

A. Generally.

A person shall submit an application to participate in horse racing as a jockey. The applicant shall submit to the stewards sufficient evidence that he is either a journeyman or apprentice jockey in another jurisdiction and demonstrates sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other jockeys.

B. Examinations.

A jockey may be required to take a physical examination from a physician appointed by the stewards to establish that he possesses the physical ability to safely ride in races. A jockey may also be required to take an eye examination from a physician appointed by the stewards to establish he has eyesight sufficient to safely ride in races.

C. Prohibitions.

A jockey or apprentice jockey may not be an owner or trainer of any racehorse with the exception of horses starting in jump races.

D. Apprentice jockey.

If the person does not possess a currently valid permit from another jurisdiction as an apprentice jockey or has not ridden satisfactorily in three races at a pari-mutuel meeting, then the stewards may allow the person to ride probationary mounts in three races at a race meeting licensed by the commission under the following conditions:

1. That he is at least 16 years old;

2. That he has been employed for at least one year under the supervision of a person holding a permit as a trainer;

3. A trainer submits a notarized statement to the stewards that the person has been employed by him and has demonstrated sufficient horsemanship to be allowed to ride in three races at a race meeting licensed by the commission;

4. The starter has schooled the person from the starting gate with other horses and approves the person as capable of breaking a horse properly from the starting gate;

5. The stewards retain sole discretion of whether or not the person possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other jockeys; and

6. The stewards, in their discretion, may at any time deny the person the opportunity to ride in more races for cause.

If the person possesses a currently valid permit from another jurisdiction as an apprentice jockey or has ridden satisfactorily in three races at a pari-mutuel meeting, then the person must submit sufficient evidence to the stewards:

a. That he is at least 16 years old;

b. That he has ridden satisfactorily in at least three races at a pari-mutuel meeting;

c. That he has been employed for at least one year under the supervision of a person holding a permit as a trainer; and

d. That he has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other jockeys.

E. Amateur jockey.

A permit may be issued to a person desiring to participate in horse racing as an amateur jockey. The person shall compete on even terms when riding against professional jockeys, but he shall not accept any fees or gratuities. The person must meet all of the requirements for an apprentice jockey, and his amateur status must be noted on the program.

F. Jump jockey.

A permit may be issued to a person desiring to participate in horse racing as a jockey riding horses in jump races. A person shall submit an application for the

appropriate permit, meet all of the requirements pertaining to holders of permits as jockeys, and hold a currently valid license issued by the stewards of the National Steeplechase and Hunt Association.

G. Foreign jockey.

Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, he must submit an application for a permit and declare that he is a holder of a valid permit and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet stating:

1. That he is the holder of a valid permit to ride;
2. That he is not currently under suspension; and
3. That he agrees to be bound by the rules and regulations of the jurisdiction in which he is riding.

This sheet shall be retained by the stewards and at the conclusion of the jockey's participation in racing, it shall be returned to the jockey, properly endorsed by the stewards, stating he has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the stewards shall notify the racing authority issuing the original permit to extend the penalty for the same period of time.

H. Apprentice allowance.

An apprentice jockey or jockey riding probationary mounts may claim in all overnight races, except handicaps, a five-pound apprentice allowance. The jockey may claim the five-pound apprentice allowance for a period of one year from the date he rides his fifth winner. He shall be entitled for the five-pound apprentice allowance beyond the one year limit until he rides a total of 45 winners. However, he shall not be entitled to the five-pound apprentice allowance beyond two years from the date of riding his fifth winner.

I. Extension of apprentice allowance.

The stewards, in their discretion, may extend the apprentice allowance because of time lost by disability arising out of an accident and injury incurred while plying his trade or by military service, disabling illness or restrictions on horse racing. In order to qualify for the extension, he shall have been rendered unable to ride for a period of not less than 14 consecutive days during the period in which he was entitled to an apprentice allowance.

J. Jockey contracts.

An apprentice jockey may enter into a contract with an owner or trainer, who holds an appropriate permit issued by the commission, for a period not less than three years nor more than five years. The following provisions shall

apply to contracts for apprentice jockeys:

1. The original contract is to be submitted to the stewards with copies made available to the parties to the contract;
2. A written extension may be made to a contract, if the original was for less than five years;
3. The original contract shall be kept in full force and in effect throughout its contract period. Any and all amendments to the contract shall be made a part of and either added to or attached to copies in the possession of the parties and a copy of the amendments submitted to the stewards;
4. An owner or trainer may not enter into a contract with an apprentice jockey unless he has control or possession of a stable of horses as would, in the discretion of the stewards, warrant the employment of an apprentice;
5. An apprentice jockey may not acquire his own contract;
6. All apprentice jockey contracts must be submitted to the stewards within 30 days of their execution or upon filing an application for a permit;
7. The contract shall provide for fair remuneration, adequate medical attention, suitable board and lodging, workers' compensation insurance coverage, and provision for conserving the savings out of the earnings of the apprentice; and
8. Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by his contract holder. An interest in the winnings only, e.g., a trainer's commission, does not constitute ownership.

K. Apprentice certificate.

An apprentice jockey may be granted an apprentice certificate issued by the stewards, in lieu of a traditional apprentice contract. The apprentice certificate shall be for three years, from the date of issuance, and shall grant to an apprentice all allowances and conditions that are granted to an apprentice jockey who is under contract.

L. Restrictions of jockeys under contract.

Any apprentice or journeyman jockey, who is under a contract to an owner or trainer, shall not:

1. Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;
2. Ride or agree to ride any horse in a race without consent of his contract employer;

Proposed Regulations

3. Share any money earned from riding with his contract employer; and

4. Accept any present, money or reward of any kind in connection with his riding of any race except through his contract employer.

M. Calls and engagements.

Any jockey, who is not prohibited by a contract, may agree to give first or second calls on his services to any owner or trainer. If the agreement is for more than 30 days, then the agreement must be in writing and a copy of the agreement submitted to the stewards for approval. Any jockey employed by an owner or trainer on a regular salaried basis may not ride against the stable. No owner or trainer shall employ or engage a jockey to prevent him from riding another horse.

N. Naming of jockeys.

A jockey shall be named to ride a horse in a race no later than scratch time of the day of the race, and a subsequent change of a jockey shall be approved by the stewards. The following provisions shall apply to the naming of a jockey:

1. After a jockey gives a call to ride a horse in a race, either personally or through his agent, and fails to fulfill the engagement, he shall not accept another engagement in that race or be assigned by the stewards to another horse in that race;

2. In races where a jockey has more than one engagement, the jockey agent shall be requested to specify a first and second call on the jockey's services; and

3. A jockey may be named on no more than two horses in the body of a race and named on no more than three horses including "also eligibles."

O. Fee earned.

A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned if the jockey, of his own free will, takes himself off of his mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above regulation shall be at the discretion of the stewards.

P. Multiple engagements.

If any owner, or his trainer or authorized agent, engages two or more jockeys after scratch time to ride the same horse in the same race, the owner shall pay the unplaced fee to the jockey not riding his horse in the race. No owner shall be held liable for multiple engagements where such engagements are the results of actions taken by jockeys or their agents.

Q. Duty to fulfill engagements.

A jockey shall fulfill his duty scheduled riding engagements, unless excused by the stewards. No jockey shall be forced to ride a horse he believes to be unsound or over a racing surface that he believes to be unsafe. If the stewards find that a jockey's refusal to fulfill a riding engagement is unwarranted, then the jockey may be subject to disciplinary action.

R. Presence in jockey room.

A jockey, who has an engagement to ride in a race, shall be physically present in the jockeys' room at a time appointed by the stewards, unless excused by the stewards, and upon arrival shall report all of his engagements for the program to the clerk of scales. The following provisions shall apply:

1. In the event a jockey does not report to the clerk of scales at the appointed time, the clerk of scales shall advise the stewards who may name a substitute jockey and any substitution shall be publicly announced prior to the opening of wagering;

2. After reporting to the clerk of scales, a jockey shall remain in the jockeys' room until he has fulfilled all of his engagements for the program. A jockey may only leave to ride in a race or to view the races from a location approved by the stewards;

3. A jockey shall have no communication with any person outside the jockeys' room other than an owner or trainer for whom he is riding, racing official or representative of the media; and

4. A jockey, who intends to discontinue riding at a race meeting prior to its conclusion, shall notify the stewards no later than upon fulfilling his final engagement of the day he intends to depart.

S. Attire.

A jockey shall wear traditional attire and shall be neat and clean in appearance. A jockey shall wear the cap and jacket in the owner's racing colors, white breeches, top boots, protective helmet, and a number on his right shoulder corresponding to the horse's number as shown on the saddle cloth and daily program.

T. Weighing out.

A jockey shall report to the clerk of scales for weighing out, not more than one hour and not less than 15 minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any. The following provisions shall apply to weighing out:

1. A jockey shall not carry more than one pound of overweight, without the consent of the owner or

Proposed Regulations

trainer of the horse which he is engaged to ride; however, a jockey shall not carry more than five pounds of overweight;

2. Whip, blinkers, number cloth, bridle, goggles and protective helmet shall not be included in a jockey's weight;

3. All overweights shall be promptly reported to the stewards; and

4. No horse shall be disqualified because of overweight carried.

U. Weighing in.

Following the completion of the race, a jockey shall ride his horse to the finish, salute the stewards before dismounting, remove from the horse his equipment, without assistance, which is to be included in a jockey's weight, and move promptly to the scales where he may be weighed in by the clerk of scales. No person shall throw any covering over any horse until a jockey has removed from the horse his equipment which is to be included in a jockey's weight. Due to injury to either horse or jockey, the stewards may excuse the jockey from weighing in. A jockey shall weigh out and weigh in at the same weight, unless affected by the elements.

V. Wagering.

A jockey may only have a wager placed for him through an owner or trainer of the horse he is riding in the race, and the jockey's wager shall only be on his horse to win. The owner or trainer placing the wager shall keep precise records of all wagers placed for a jockey and the record shall be available to the stewards upon request.

W. Viewing films.

A jockey shall be responsible for checking the film list posted by the stewards in the jockeys' room the day after riding in a race. A jockey, whose name is on the film list, shall be present at the designated time and place to view the films of the race. A jockey may be accompanied by a representative of his choosing.

X. Jockey suspensions.

The stewards, with the approval of the commission, may designate the stakes races, futurities or other special events at the race meeting in which a jockey will be permitted to compete, notwithstanding the fact that the jockey is under suspension for 10 days or less for a riding infraction at the time the designated race is to be run. The following provisions shall apply:

1. The ruling issued by the stewards for jockeys shall state: "The term of this suspension shall not prohibit participation in designated races;"

2. A listing of the designated races shall be posted in the jockeys' room, the racing secretary's office and any other place deemed appropriate by the stewards;

3. A suspended jockey must be named at time of entry to participate in any designated race; and

4. A day in which a jockey participated in one designated race while under suspension shall count as a suspension day.

§ 13. Jockey agent.

A person shall submit an application to participate in horse racing as a jockey agent. The jockey agent acts as an agent for the jockey he represents in securing riding engagements. The stewards, in their discretion, may ask a person to take a written or oral examination to determine his fitness to participate in horse racing as a jockey agent. In addition to all of the requirements imposed upon all holders of permits, the following shall apply to jockey agents:

1. A jockey agent shall designate in writing those jockeys for whom he is making engagements;

2. A jockey agent shall have in his possession at all times an engagement book, approved by the stewards, and all engagements made for a jockey by the agent shall be recorded in the book. The book shall be presented to the stewards upon request;

3. A jockey agent shall not make or assist in making of any engagement for a jockey other than those he has designated in writing;

4. A jockey agent may make engagements for only two jockeys, one of which must be an apprentice jockey;

5. A jockey agent may make engagements for two journeyman jockeys only with the permission of the stewards;

6. If a jockey agent relinquishes the making of engagements for any jockey, the jockey agent shall immediately notify the stewards and clerk of scales and turn over to the stewards a list of any unfilled engagements he may have made for that jockey;

7. A jockey agent may give only one "first call" and two "second calls" per race for each jockey he represents, and conflicting claims for the services of a jockey shall be decided by the stewards;

8. A jockey agent shall be able to explain, to the satisfaction of the stewards, rival claims for the services of a jockey or that the rival claims are the result of bona fide error;

9. No jockey shall have more than one agent;

Proposed Regulations

10. An owner, trainer or authorized agent may make engagements for an apprentice jockey or jockey; and

11. A jockey not represented by an agent may make his own engagements.

§ 14. Exercise rider.

A person shall submit an application to participate in horse racing as an exercise rider. If the applicant for a permit as an exercise rider is not employed by an owner or trainer or does not possess a similar permit from another jurisdiction, then the stewards may, in their discretion, require the applicant to demonstrate his horsemanship before issuing a permit to the applicant. The exercise rider shall wear a protective helmet when exercising horses.

§ 15. Pony rider.

A person shall submit an application to participate in horse racing as a pony rider. If the applicant for a permit as a pony rider is not in possession of a similar permit from another jurisdiction, then the stewards may, in their discretion, require the applicant to demonstrate his horsemanship before issuing a permit to the applicant. The pony rider shall wear a protective helmet and attire prescribed by the licensee. The attire shall be neat, clean and in good repair.

§ 16. Farrier.

A person shall submit an application to participate in horse racing as a farrier. If the applicant for a permit as a farrier does not possess a similar permit from another jurisdiction, then the stewards may, in their discretion, require the applicant to demonstrate his skill under the supervision of the commission veterinarian and an experienced farrier before issuing a permit.

§ 17. Driver.

A person shall submit an application to participate in horse racing as a driver of Standardbreds. The person shall meet all of the requirements set forth in these regulations pertaining to holders of permits, and hold a currently valid provisional or full license as a driver from the United States Trotting Association. The following provisions shall apply to drivers:

1. A driver may be required to take a physical examination from a physician appointed by the stewards to establish that the person is physically fit to safely drive in races;

2. A driver may be required to take an eye examination from a physician appointed by the stewards to establish that the person has eyesight sufficient to safely drive in races;

3. A driver shall wear attire as prescribed by the

stewards, including racing colors registered with the United States Trotting Association and a protective helmet, approved by the Snell Foundation or United States Department of Transportation, with the chin strap in place, on the racing surface during racing hours;

4. A driver shall report to the paddock judge, at a time prescribed by the stewards, on those days he has a driving engagement;

5. A driver, once he has reported to the paddock judge, may leave the paddock only to warmup or drive horses in races and may not leave the paddock until his participation in the program is completed;

6. A driver shall fulfill his engagements, and, if he is removed from driving a horse in a race, he shall not drive another horse in the same race; and

7. A driver shall not refuse to be substituted by the stewards without good and sufficient reason.

§ 18. Mutuel clerk.

The licensee shall employ a sufficient number of qualified persons to act as mutuel clerks for the race meeting. A mutuel clerk shall sell and cash valid pari-mutuel tickets under the supervision of the mutuel manager and report any unusual patterns in the wagering to the mutuel manager. The person shall submit an application for a permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 19. Concessionaire/vendor.

A person shall submit an application to participate in horse racing as a concessionaire or vendor. A concessionaire or vendor shall be considered any person selling goods or services, either personally or through employees or representatives, to other persons within the enclosure, whether the sales are made to the public or persons holding permits issued by the commission. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 20. Concessionaire/vendor employee.

A person shall submit an application to participate in horse racing as an employee of a concessionaire or vendor. An employee of a concessionaire or vendor shall be considered a person who sells goods or services for his employer whether the sales are made to the public or persons holding permits issued by the commission. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these

regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 21. Licensee-administrative employee.

A person shall submit an application to participate in horse racing as an administrative employee of the licensee. An administrative employee shall be considered any person employed in the administrative offices of the licensee who is not specifically mentioned elsewhere in these regulations. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 22. Licensee-marketing employee.

A person shall submit an application to participate in horse racing as a marketing employee of the licensee. A marketing employee shall be considered as any person employed in marketing, promotion, public address announcing, publicity, information windows or public relations for the licensee. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 23. Licensee-medical employee.

A person shall submit an application to participate in horse racing as medical employee of the licensee. A medical employee of the licensee shall be considered as any person employed as a physician, nurse, para-med, first-aid room attendant or ambulance driver. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 24. Licensee-operations employee.

A person shall submit an application to participate in horse racing as an operations employee of the licensee. An operations employee shall be considered as any person employed in admissions, parking, program sales, gift shop and as ushers, technicians or guides. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 25. Licensee-plant employee.

A person shall submit an application to participate in horse racing as a plant employee of the licensee. A plant employee shall be considered as any person employed in

maintenance and repair of structure, grounds, or racing surface of the facility. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 26. Licensee-staff employee.

A person shall submit an application to participate in horse racing as a staff employee of the licensee. A staff employee shall be considered as any person employed as a secretary, receptionist or any other capacity on the licensee's staff. A person shall submit an application for the appropriate permit, meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 27. Other.

A person shall submit an application to participate in horse racing as an employee of another permit holder, vendor or licensee, not stated elsewhere in these regulations. The employer shall notify the stewards, in writing, of the employment of the person. The person shall meet all of the requirements set forth in these regulations pertaining to holders of permits, and his participation shall be in accordance with the provisions of these regulations.

§ 28. Independent contractors.

These regulations, which are applicable to persons employed by the licensee in various categories, are equally applicable to persons employed as independent contractors retained by the licensee.

Proposed Regulations

P.O. Box 112
Richmond, VA 23208
Phone: (804) 375-7363

RENEWAL APPLICATION FOR PARTICIPANT 19

Permit Number:
Type of Permit:
Date Applied:
Date Approved:
Date Denied:

Last Name	First Name	Middle Name	Type of Permit
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INFORMATION AND INSTRUCTIONS

This application shall be accompanied by the fee prescribed by the Virginia Racing Commission and shall include the cost of fingerprinting. The applicant shall be fingerprinted upon making his initial application in the Commonwealth of Virginia and at least once every five years thereafter.

The applicant shall consult the Fee Schedule of the Virginia Racing Commission to ascertain the applicable fee, make out a check or money order to the Virginia Racing Commission or pay in cash the full amount of the fee, and submit the fee with the application.

The application must be typed or completed in ink. All questions must be answered and signed by the applicant. All employers must also sign their employer's application.

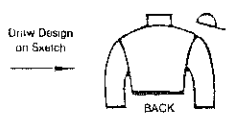
Applicant's Name MR () MS () MISS () MRS () Last First Middle Permanent Mailing Address Number and Street or Rural Route/Box Number City, Town or Post Office State Zip Present Address Number and Street or Rural Route/Box Number City, Town or Post Office State Zip Maiden Name (if applicant is married) Licensee or Employer U.S. Citizen Yes () No (). If no citizen of Immigration I.D. Number Person to notify in emergency Relationship Address Telephone Number City, Town or Post Office State Zip	DATE OF BIRTH TELEPHONE Home Business PLACE OF BIRTH SEX HEIGHT HAIR HEIGHT EYES MARITAL STATUS Married Single Divorced	OWNER AND TRAINER Number of hosts in training Are you obligated to have workman's compensation insurance covering employees in your region with racing? If yes, indicate company name Policy Number Expiration Date Name of Policyholder ASSISTANT TRAINER Assistant to trainer Number of horses in your care JOCKEYS AND APPRENTICE JOCKEYS Name of Agent JOCKEY AGENTS (1) Jockey's Signature (2) Jockey's Signature LAST LICENSED 19 TYPE LICENSE Give name of State the last year you were licensed and type of license
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Have you been fined off, suspended or otherwise debarred or denied a license or permit in any other racing jurisdiction since you last received a permit in Virginia? Yes () No (). If yes explain

Have you been arrested or has a criminal summons been issued against you since you were last received a permit in Virginia? Yes () No (). If yes explain

FOR EACH CONVICTION, A CERTIFIED COPY OF THE COURT COMPLAINT, INCLUDING INDICTMENT AND/OR CERTIFIED COPY OF THE DISPOSITION MUST BE ATTACHED TO THE APPLICATION. IF PAPERS ARE NOT ATTACHED, YOUR APPLICATION WILL BE CONSIDERED INCOMPLETE AND WILL NOT BE PROCESSED.

Racing Colors
 Jacket _____
 sleeves _____
 Cap _____



I hereby certify that I have read this application and that the applicant is my employee. I also hereby certify that I will be responsible for the actions of my employee as they relate to racing matters.

Signature of Employer _____ Date _____

I am knowledgeable about the regulations of the Virginia Racing Commission, and I agree to abide by the regulations of the Commission as well as the rulings of the stewards, unless reversed or modified by the Commission.

By submitting this application, I hereby irrevocably consent to a search for and to the seizure of any drug, stimulant, hypnotic, narcotic, syringe, or other similar device, and any material, which could be used to effect the concealment or action of a horse. I also hereby irrevocably consent to the right of Commission personnel to enter into, or upon buildings, stables, farms, automobiles or other places within the enclosure, as defined by the regulations of the Commission, to examine them, and to inspect and examine my personal property and effects. I recognize that by refusing to consent to such searches and seizures that I am subject to disciplinary action.

I hereby certify that I read this application and affirm that every statement contained therein is true and correct to the best of my knowledge and belief. I do hereby agree that if errors may be revoked at any time for misstatements of omissions in this application.

I hereby agree to be subject to the subpoena powers of the Virginia Racing Commission or a written request in lieu of a subpoena and provide the Commission with any and all information or documents which it may request. This agreement shall extend to anything which relates to any matter which is the subject of a Commission hearing or investigation.

Signature of Applicant _____ Date _____

Proposed Regulations

VIRGINIA RACING COMMISSION

FEE SCHEDULE FOR PERMIT HOLDERS

Type of Permit	Fee
Apprentice Jockey	\$ 10
Assistant General Manager	\$ 10
Assistant Racing Secretary	\$ 10
Assistant Starter	\$ 5
Assistant Trainer	\$ 10
Authorized Agent	\$ 10
Bloodstock Agent	\$ 10
Claims Clerk	\$ 10
Clerk of Scales	\$ 10
Clerk of the Course	\$ 10
Clocker	\$ 10
Concessionaire/Vendor	\$ 25
Concessionaire/Vendor Employee	\$ 5
Corporate Horse Owner	\$ 25
Custodian of Jockeys' Room	\$ 10
Director of Security	\$ 10
Driver	\$ 10
Entry Clerk	\$ 10
Exercise Rider	\$ 10
Farrier	\$ 10
Foreman	\$ 10
Gap Attendant	\$ 10
General Manager	\$ 10
Groom/Hotwalker	\$ 5
Horse Identifier	\$ 10
Horsemen's Bookkeeper	\$ 10
Horse Owner	\$ 10
Jockey	\$ 10
Jockey Agent	\$ 10
Lease	\$ 25
Licensee-Administrative Employee	\$ 10
Licensee-Marketing Employee	\$ 10
Licensee-Medical Employee	\$ 10
Licensee-Operations Employee	\$ 10
Licensee-Plant Employee	\$ 10
Licensee-Staff Employee	\$ 10
Mutuel Clerk	\$ 10
Mutuel Manager	\$ 10
Nightwatchman	\$ 10
Other	\$ 10
Outrider	\$ 10
Paddock Judge	\$ 10
Partnership	\$ 25
Patrol Judge	\$ 10
Pharmaceutical Representative	\$ 25
Photo-Finish Camera Operator	\$ 10
Placing Judge	\$ 10
Pony Rider	\$ 10
Program Director	\$ 10
Racing Secretary	\$ 10
Security Officer	\$ 10
Stable Name	\$ 25
Stall Superintendent	\$ 10
Starter	\$ 10
Timer	\$ 10
Track Superintendent	\$ 10
Trainer	\$ 10
Valet	\$ 5
Veterinarian (Licensee)	\$ 10
Veterinarian (Private Practice)	\$ 10
Video Patrol Personnel	\$ 10

VIRGINIA RACING COMMISSION
PERMIT

PERMIT NO.: _____
EXPIRES: _____
NAME: _____ TYPE: _____
HT: _____ WT: _____ EYES: _____ HAIR: _____
SIGNATURE: _____

VIRGINIA RACING COMMISSION
MULTIPLE PARTICIPATION FORM

Name _____
Last First Middle
Present Address _____
Number and Street or Rural Route/Box Number
City, Town or Post Office State Zip
Present Capacity _____ Permit Number _____
Capacity Applied For _____
Date Applied _____
Date Approved _____
Date Denied _____

Proposed Regulations

VIRGINIA RACING COMMISSION
PRIVATE PRACTITIONER REPORTING FORM

PRACTITIONER: _____ DATE: ___/___/___

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

Horse: _____ Trainer: _____

Treatment: _____

Dose: _____ Time: _____

(Signature of Private Practitioner)

* * * * *

Title of Regulation: VR 662-04-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: April 17, 1991 - 9:30 a.m.
(See Calendar of Events section for additional information)

Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. The proposed regulation sets forth the conditions under which claiming races will be conducted at race meetings licensed by the commission.

VR 662-04-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races.

§ 1. Generally.

A claiming race is a race in which any horse programmed may be purchased for the designated price by any person holding a permit as an owner, or his authorized agent, or a person holding a claiming certificate issued by the commission. For the purposes of this regulation, "programmed" means the horse's name and designated claiming price are printed in the daily program published by the licensee.

§ 2. Claiming certificate.

A person, who does not hold a permit as an owner, may apply for a claiming certificate. The following provisions shall apply to applicants for claiming certificates:

- 1. The applicant shall submit an application for a permit as an owner, pay the applicable fee, be photographed and fingerprinted as set forth in regulation VR 662-03-02.*
- 2. The applicant also shall submit a statement designating the trainer who will assume care and responsibility for the horse claimed;*
- 3. The trainer named in the statement must be the holder of a currently valid permit issued by the commission;*
- 4. The claiming certificate may be issued to the applicant which will be valid for one calendar year, but it may be canceled by the stewards for cause; and*

5. The applicant shall file the claiming certificate with the racing secretary indicating his eligibility to claim a horse.

§ 3. Voided claiming certificate.

The holder of a claiming certificate may be issued a permit as an owner upon the completion of a valid claim and the claiming certificate shall be returned to the commission and voided.

§ 4. Eligibility to claim.

Only a holder of a permit as an owner, or his authorized agent, or the holder of a claiming certificate may file a claim on a horse programmed to race in a claiming race. The following provisions shall apply to the eligibility of persons filing claims:

- 1. An authorized agent may only file a claim for an owner for whom he is authorized to act as an agent;*
- 2. A person holding a permit solely as an authorized agent may not file a claim for himself or for any other person for whom he is not authorized to act as agent;*
- 3. An owner, authorized agent or holder of a claiming certificate may file only one claim for any race;*
- 4. An owner may not file a claim for his horse, or cause his horse to be claimed, directly or indirectly, for his account; and*
- 5. A partnership, stable name or any other joint venture, despite the number of individual owners comprising such a venture, may file no more than one claim for any race.*

§ 5. Claiming procedure.

A claim may be filed on a horse programmed to race by properly completing a claim slip, sealing the claim slip in an envelope and depositing the envelope in a locked claims box. The following provisions shall apply to the claiming of a horse:

- 1. The licensee shall provide claim slips, claim envelopes and a locked claim box to secure filed claims;*
- 2. The claim slip, enclosed in a sealed envelope, must be deposited in a locked claim box at least 15 minutes before post time of the race for which the claim is filed;*
- 3. The licensee shall provide a clock, and before the sealed envelope is deposited in the locked claim box, the time of day shall be stamped upon the envelope;*
- 4. No money or its equivalent shall be put in the*

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claim box;

5. The person filing the claim must have sufficient funds on deposit with the horsemen's bookkeeper or licensee in not less than the amount of the designated price and applicable sales taxes;

6. The claims clerk shall open the claim box when the horses enter the racing surface on their way from the paddock to the post;

7. The claims clerk shall inform the stewards of a claim filed for a horse and of multiple claims on a horse;

8. The claims clerk shall ascertain that the claim slip and envelope are properly complete;

9. The claims clerk shall ascertain that the person is eligible to claim a horse and inform the stewards immediately of any doubts of the person's eligibility;

10. The claims clerk shall ascertain that there are sufficient funds on deposit with the horsemen's bookkeeper or licensee of not less than the amount of the claim and applicable sales taxes;

11. If more than one valid claim is filed for a horse, then title to the horse shall be determined by lot under the supervision of the stewards;

12. A claimed horse shall race in the interest of and for the account of the owner from whom the horse was claimed;

13. The original trainer shall remain the absolute insurer of the condition of the horse until any post-race testing is completed;

14. Title to a claimed horse shall be transferred to the new owner at the time the horse is deemed a starter whether the horse is dead or alive, sound or unsound, or injured in the race or after the race;

15. A horse is deemed a starter when it obtains a fair start;

16. For Standardbreds, a claim may be filed for a horse that is programmed to race but is scratched;

17. A horse that has been claimed shall be delivered to the new owner, with its halter, at the conclusion of the race either at the paddock or at the detention barn, after the completion of any post-race testing;

18. The claimant shall present the former owner with written authorization of the claim from the racing secretary;

19. A positive test result for any prohibited drug is grounds for voiding the claim;

20. The new owner may request that the horse be tested for equine infectious anemia, by taking the horse immediately following the race to the detention barn where a blood sample will be drawn;

21. A positive test result for equine infectious anemia is grounds for voiding a claim;

22. The certificate of registration, eligibility certificate or registration document shall be retained by the racing secretary until the results of the post-race testing are known;

23. The funds for the claim shall be retained by the horsemen's bookkeeper or licensee until the results of the post-race testing are known;

24. When it is determined that the claim is valid and that there are no grounds for voiding the claim, the certificate of registration shall be delivered by the racing secretary to the claimant and the funds for the claim shall be paid to the former owner;

25. The new owner shall be responsible for filing the change of ownership with the appropriate breed registry; and

26. Despite any designation of sex or age of a horse appearing in the daily program or other publication, the person making the claim shall be solely responsible for determining the sex or age of the horse before filing a claim for the horse.

§ 6. Invalid agreements.

No person shall offer or agree to claim or not to claim, or attempt to prevent another person from claiming any horse in any claiming race. No person shall attempt to prevent another person from entering a horse in a claiming race. No owner or trainer shall make an agreement with another owner or trainer for the protection of each other's horses in a claiming race.

§ 7. Voided claims.

The stewards may void any claim that violates the provisions of this regulation. The stewards, in their discretion, may require a person filing a claim to sign a written statement that the claim was made according to the provisions of this regulation.

§ 8. Restrictions on a claimed horse.

When a horse is claimed out of a claiming race, the following restrictions shall apply to the horse for 30 calendar days after the day that the horse was claimed:

1. The horse may only start in claiming races for a designated price of 25% more than the amount for which the horse was claimed, except for Standardbred racing, a horse may start in claiming races for a

designated price equal to or less than the amount for which the horse was claimed;

2. The horse may not be sold or transferred wholly or in part to another person, except in another claiming race;

3. The horse may not remain in the same stable or under the control or supervision of its former owner or trainer, unless reclaimed; and

4. The horse may not race elsewhere until after the close of the meeting at which it was claimed or 30 calendar days, whichever occurs first, except with the discretion of the stewards.

§ 9. Jump races.

For the purposes of races sanctioned by the National Steeplechase and Hunt Association (NSHA), any racing conducted from January 1 through June 30 shall be considered "one meeting" and any racing conducted from July 1 through December 31 shall be considered "one meeting." Any horse claimed may only race at meetings sanctioned by the NSHA until the close of the meeting during which it was claimed or for 30 days, whichever comes first.

§ 10. Disciplinary action.

Failure to comply with the regulations pertaining to claiming of horses or failure to deliver a horse that has been claimed may subject the permit holder or holder of a claiming certificate to disciplinary action by the stewards.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Editor's Notice: The Public Participation Procedures of the Chesapeake Bay Local Assistance Board are republished in their entirety. Language, which was omitted in §§ 5.1, 5.2, and 5.7 when they were published as final regulations in 6:9 VA.R. 1280-1281, January 29, 1990, is included. (Please note that this changed version of the regulation carries a March 27, 1991, effective date.) Changes are noted in brackets.

Title of Regulation: VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

Statutory Authority: § 10.1-2103 of the Code of Virginia.

Effective Date: March 27, 1991.

Summary:

The guidelines provide for the initiation of regulation development procedures, including: (i) the procedure and form of a petition by any individual or group requesting adoption or change of any regulation; (ii) the development and maintenance of information dissemination lists including general information and regulation development mailing lists; and (iii) public participation procedures for providing notification to individuals or groups contained in the information dissemination lists of proposed regulatory actions, adoption or change of regulations, formation of an advisory committee and other policy and technical advisory groups, as considered desirable, to assist in development of initial draft regulations, scheduling and notification for public hearings, and procedures for submission of proposed regulations for public comments.

VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

PART I. PURPOSE AND AUTHORITY.

§ 1.1. These regulations establish public participation procedures for the development or revision of regulations by the Chesapeake Bay Local Assistance Board. These procedures are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act), and under § 10.1-2100 et seq. of the Code of Virginia (Chesapeake Bay Preservation Act). These guidelines do not apply to any

regulation adopted on an emergency basis nor to other regulations excluded from the operation of Article 2 of The Administrative Process Act under § 9-6.14:4.1 C of the Code of Virginia.

PART II. DEFINITIONS.

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

"Board" means the Chesapeake Bay Local Assistance Board established under § 10.1-2102 of the Code of Virginia.

"Department" means the Chesapeake Bay Local Assistance Department.

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

PART III. INITIATION OF REGULATION DEVELOPMENT PROCEDURES.

§ 3.1. Regulation development may be initiated at any time by the board on its own motion or in response to a petition.

§ 3.2. Any person may petition the board for the promulgation, amendment, addition, or repeal of a regulation. The petition shall, at a minimum, contain the following information:

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

7. Supporting documents, as applicable.

If the board determines not to act upon a petition it shall provide a written response to such petition within a period of time not exceeding 90 days from the date of the petition.

PART IV. INFORMATION DISSEMINATION LISTS.

§ 4.1. The board shall develop and maintain a general information mailing list of persons who indicate an interest in its activities or whom the board believes are interested in its activities.

§ 4.2. The board shall develop a regulation development mailing list for each regulatory proceeding, consisting of persons from the general information mailing list who express an interest in the proceeding and such other persons as the board believes have an interest in the proceeding. The board shall maintain such list until the conclusion of each proceeding.

PART V. PUBLIC PARTICIPATION PROCEDURES.

§ 5.1. When the board decides to adopt or change regulations, it shall notify persons on its general information mailing list of the subject matter of the proposed regulations and invite any interested persons to indicate their interest in the proposed regulation. Those who indicate an interest in the proposed regulation shall be placed on the regulation development [*mailing*] list for that regulation.

§ 5.2. Persons will be added to the regulation development [*mailing*] list when they so request, or [*on motion at the request*] of the director or of a board member.

§ 5.3. The board shall schedule one or more public information meetings to assist in the formulation of the regulation and to provide interested persons an opportunity to submit data, views and arguments either orally or in writing. Notice of such meetings shall be mailed to persons on the regulation development mailing list and given such other reasonable notice as the board determines. The notice shall include the following information:

1. Subject of proposed action.
2. Discussion of the purpose of the proposed action and the issues involved.
3. Proposed timetable for reaching a decision.
4. Request for comments from interested persons and a date by which comments must be received.
5. Name, address, and telephone number of staff person to be contacted for further information.

§ 5.4. The board will form an advisory committee consisting of persons selected from the regulation development mailing list to assist in developing an initial draft of the proposed regulation. The board may also form such other policy and technical advisory groups as it considers desirable.

§ 5.5. After consideration of all public input, the board shall prepare a final draft of the proposed regulation and publish a notice requesting public comment in accordance with the Administrative Process Act.

§ 5.6. The board will send a copy of the final draft of the proposed regulation to any person who requests it.

§ 5.7. The board shall submit [*any a notice of hearing and the*] proposed regulation [; *or change thereto,*] for a 60-day [*public*] comment period pursuant to § 9-6.14:7.1 by forwarding the required documents [*to the Registrar of Regulations*] for publication in the Virginia Register of Regulations.

§ 5.8. The board shall mail a copy of the notice of hearing to persons on its regulation development mailing list. The board may also publish the notice of hearing in other media as it may deem appropriate.

§ 5.9. Upon expiration of the public comment period, the remaining steps in the adoption process shall be carried out in accordance with the provisions of the Administrative Process Act.

§ 5.10. The failure of any person to receive notice or copies of documents shall not affect the validity of any regulation otherwise properly adopted under the provisions of the Administrative Process Act.

DEPARTMENT OF COMMERCE

Title of Regulation: VR 190-03-01. Regulations Governing Polygraph Examiners.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-1802 of the Code of Virginia.

Effective Date: March 27, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:5 VA.R. 625-629 December 3, 1990.

BOARD FOR COSMETOLOGY

Title of Regulation: VR 235-01-02. Board for Cosmetology Regulations.

Statutory Authority: §§ 54.1-113 and 54.1-201 5 and Chapter 12 (§ 54.1-1200 et seq.) of the Code of Virginia.

Final Regulations

Effective Date: April 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:4 VA.R. 465-476 November 19, 1990.

CRIMINAL JUSTICE SERVICES BOARD

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors, and § 9-6.14:4.1 C 4(a) of the Code of Virginia which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Criminal Justice 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 240-01-13. Rules Relating to Regional Criminal Justice Training Academies.

Statutory Authority: § 9-170 of the Code of Virginia.

Effective Date: April 1, 1991.

Summary:

These amendments are a result of technical changes in Virginia statutory law and for the purpose of clarifying and updating the language of the existing regulation.

Specifically, the amendments designate and identify correctly the name and location of certain training facilities as Regional Criminal Justice Training Academies and edit the language and terminology in the existing regulation to bring it into conformity with that used in the Code of Virginia. The amendments also identify two training academies not previously referenced in the regulation.

Finally, an amendment is made which permits a jurisdiction to join a regional academy upon compliance with policies established by the Criminal Justice Services Board. Prior to the amendment membership is conditioned upon approval of the Regional Academy Board.

VR 240-01-13. Rules Relating to Regional Criminal Justice Training Academies.

§ 1. Definitions.

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

A. "Commission" means the Criminal Justice Services Commission.

"Board" means the Criminal Justice Services Board.

"Department" means the Department of Criminal Justice Services.

B. "Regional academy" means Regional Criminal Justice Training academy.

§ 2. Designation.

A. The regional academies set forth below are designated as regional academies and are eligible to receive allocated funds from the ~~Commission~~ department .

Cardinal Criminal Justice Academy - Salem, Virginia

Central Shenandoah Criminal Justice Training Academy - Waynesboro, Virginia

Central Virginia + West Piedmont Criminal Justice Academy - Lynchburg, Virginia

Crater Rappahannock Richmond Criminal Justice Academy - Petersburg, Virginia

Peninsula Tidewater Hampton Roads Regional Academy of Criminal Justice - Hampton, Virginia

New River Criminal Justice Training Academy - Dublin Radford, Virginia

Northern Virginia Criminal Justice Academy - Fairfax Arlington, Virginia

Rappahannock Regional Criminal Justice Academy - Fredericksburg, Virginia

Southwest Virginia Law Enforcement Academy - Richlands, Virginia

B. Jurisdictions may operate their own independent training academies; however, no ~~Commission~~ department funds will be available for such academies. A jurisdiction, within or without the State Commonwealth, may join a regional academy at any time subject to the approval of the Regional Academy Board complying with the policies established by the board .

C. A regional academy site may be changed by the Regional academy Board governing body, with the approval of the ~~Commission~~ board .

D. Training, where practical, shall be conducted at designated satellite locations throughout the geographical confines of the regional academy to ensure minimum travel for student officers.

E. The board shall define geographical boundaries of

designated regional academies.

§ 3. Regional Academy Board Academy governing body .

A. Each regional academy shall have a charter which shall be established in accordance with § 15.1-21 of the Code of Virginia (1950), as amended . The charter shall , in accordance with guidelines established by the board, create a ~~Regional~~ an academy Board governing body and specify the composition, authority and functions of the academy governing body and selection criteria and duties of the regional academy director .

§ 4. Funds.

The ~~Commission~~ department will disburse funds to the regional academies designated in § 2 above in accordance with the appropriations made to the ~~Commission~~ department for the purpose of providing financial support to the regional training academies. Financial reports will be required as determined by the ~~Commission~~ department .

§ 5. Effective date.

These rules shall be effective on and after ~~July 1, 1981~~ April 1, 1991 , and thereafter until amended or rescinded.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-02. Board for Hearing Aid Specialists Regulations.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Effective Date: March 27, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:5 V.A.R. 629-635 December 3, 1990.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

NOTICE: Due to its length the Virginia Statewide Fire Prevention Code filed by the Board of Housing and Community Development is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and the Department of Housing and Community Development.

Title of Regulation: VR 394-01-06. Virginia Statewide Fire Prevention Code/ ~~1987~~ 1990 .

Statutory Authority: §§ 27-95 and 27-97 of the Code of

Virginia.

Effective Date: April 15, 1991.

Summary:

The 1990 edition of the Virginia Statewide Fire Prevention Code is a mandatory, statewide set of regulations that must be complied with for the protection of life and property from the hazards of fire or explosion. Technical requirements of the Statewide Fire Prevention Code are based on the BOCA National Fire Prevention Code, a companion document to the BOCA National Building Code which is incorporated by the Uniform Statewide Building Code. The Fire Prevention Code supersedes all fire prevention regulations heretofore adopted by local government or other political subdivisions. Local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure. Local enforcement of this code is optional. The State Fire Marshal shall have authority to enforce the Fire Prevention Code in those jurisdictions in which the local governments do not enforce the code. An administrative appeals system is established for resolution of disagreements between the enforcing agency and aggrieved party.

The major change in this edition was to adopt the 1990 BOCA National Fire Prevention Code to update the reference standard. Due to its length, Addendum 2 of the regulation has been submitted as the Virginia Public Building Safety Regulations (VR 394-01-05) and has been incorporated into the Fire Prevention Code by reference (§ F-100.8) rather than contained in Addendum 2. No changes have been made to this existing document and it will be available as a separate publication. Article 26, Explosives, Ammunition and Blasting Agents was amended due to public comment to delete the proposed reference to property lines in Table F-2602 relating to separation requirements for magazines storing explosives.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-003. Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 63.1-25, 63.1-196.4, 63.1-217 and 66-24 of the Code of Virginia.

Effective Date: April 1, 1991.

Summary:

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The regulation is designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children; to reduce the level of supervision required for adolescents in independent living programs; to increase the level of supervision required for infants and during the hours children are normally sleeping; to establish different minimum staff/child ratios for severely multihandicapped, nonambulatory children and other children who are under four years of age; and to protect children from unwarranted and intrusive body searches.

Subsequent to publication of the regulation in proposed form, and in response to public comment, §§ 3.31 and 3.33 were revised. Section 3.33 was revised to establish different minimum staff/child ratios (i) for severely multihandicapped, nonambulatory children and (ii) for all other children who are under four years of age. Section 3.31 was expanded to allow facilities to deviate, through the use of deployment plans, from established staff/child ratios during children's sleeping hours as well as during the day. This revision provides facility administrators with additional flexibility in deploying child care staff while retaining an appropriate level of review by regulatory personnel. Nonsubstantive revisions were made, in response to public comment, to clarify several sections.

NOTICE: Please refer to the Department of Social Services in the Final Regulations section of this issue of the Virginia Register of Regulations for the publication of "Standards for Interdepartmental Regulation of Residential Facilities for Children."

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF) Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 63.1-25, 63.1-196.4, 63.1-217, and 66-24 of the Code of Virginia.

Effective Date: April 1, 1991.

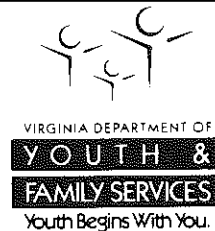
Summary:

The regulation is designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising

children; to reduce the level of supervision required for adolescents in independent living programs; to increase the level of supervision required for infants and during the hours children are normally sleeping; to establish different minimum staff/child ratios for severely multihandicapped, nonambulatory children and other children who are under four years of age; and to protect children from unwarranted and intrusive body searches.

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NOTICE: Please refer to the Department of Social Services in the Final Regulations section of this issue of the Virginia Register of Regulations for the publication of "Standards for Interdepartmental Regulation of Residential Facilities for Children."



DEPARTMENT OF YOUTH AND FAMILY SERVICES (STATE BOARD OF)

Title of Regulation: VR 230-40-001 690-40-004. **Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 63.1-25, 63.1-196.4, 63.1-217, and 66-24 of the Code of Virginia.

Effective Date: April 1, 1991.

Summary:

The regulation is designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are

designed to allow residential facility administrators increased flexibility in deploying staff supervising children; to reduce the level of supervision required for adolescents in independent living programs; to increase the level of supervision required for infants and during the hours children are normally sleeping; to establish different minimum staff/child ratios for severely multihandicapped, nonambulatory children and other children who are under four years of age; and to protect children from unwarranted and intrusive body searches.

Subsequent to publication of the regulation in proposed form, and in response to public comment, §§ 3.31 and 3.33 were revised. Section 3.33 was revised to establish different minimum staff/child ratios (i) for severely multihandicapped, nonambulatory children and (ii) for all other children who are under four years of age. Section 3.31 was expanded to allow facilities to deviate, through the use of deployment plans, from established staff/child ratios during children's sleeping hours as well as during the day. This revision provides facility administrators with additional flexibility in deploying child care staff while retaining an appropriate level of review by regulatory personnel. Nonsubstantive revisions were made, in response to public comment, to clarify several sections.

NOTICE: Please refer to the Department of Social Services in the Final Regulations section of this issue of the Virginia Register of Regulations for the publication of "Standards for Interdepartmental Regulation of Residential Facilities for Children."

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 270-01-003, 615-29-02. **Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 63.1-25, 63.1-196.4, 63.1-217 and 66-24 of the Code of Virginia.

Effective Date: April 1, 1991.

Summary:

This regulation is designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children; to reduce the level of supervision required for adolescents in independent living programs; to increase the level of supervision required for infants and during the hours children are normally sleeping;

to establish different minimum staff/child ratios for severely multihandicapped, nonambulatory children and other children who are under four years of age; and to protect children from unwarranted and intrusive body searches.

Subsequent to publication of the regulation in proposed form, and in response to public comment, §§ 3.31 and 3.33 were revised. Section 3.33 was revised to establish different minimum staff/child ratios (i) for severely multihandicapped, nonambulatory children and (ii) for all other children who are under four years of age. Section 3.31 was expanded to allow facilities to deviate, through the use of deployment plans, from established staff/child ratios during children's sleeping hours as well as during the day. This revision provides facility administrators with additional flexibility in deploying child care staff while retaining an appropriate level of review by regulatory personnel. Nonsubstantive revisions were made, in response to public comment, to clarify several sections.

VR 615-29-02. Standards for Interdepartmental Regulation of Residential Facilities for Children.

PART I INTRODUCTION.

Article 1. Definitions.

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

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

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

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

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

"Behavior management" means planned, individualized

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and systematic use of various techniques selected according to group and individual differences of the children and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior, and to reduce or to eliminate undesirable behavior. (The term is consistently generic and is not confined to those technicalities which derive specifically from behavior therapy, operant conditioning, etc.)

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

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

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

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

"Child" means any person legally defined as a child under state law.

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

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

"Client" means a person receiving treatment or other services from a program, facility, institution or other entity licensed/certified under these regulations whether that person is referred to as a patient, resident, student, consumer, recipient, or another term.

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

"Confinement procedure" means a disciplinary technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to his bedroom or other normally furnished room. The room in which the child is confined shall not be locked nor the door secured in any manner that will prohibit the child from opening it. See also the definitions of "Timeout Procedure," "Seclusion," "Behavior Management," "Discipline" and other standards related to Behavior Management.

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

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

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

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

"Day off" means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive day off immediately following the first shall consist of not less than 24 additional consecutive hours.

"Department of [Corrections Youth and Family Services] standards for youth facilities" means those additional standards which must be met in order for a facility to receive funding from the Department of [*Corrections Youth and Family Services*] for the provision of residential treatment services as a juvenile detention facility, a facility providing youth institutional services, a community group home or other residential facility serving children in the custody or subject to the jurisdiction of a juvenile court or of the Department of [*Corrections Youth and Family Services*] except that [*Core the Interdepartmental*] Standards will be the Department of [*Corrections Youth and Family Services*] Standards for Youth Facilities for residential facilities receiving public funds pursuant to §§ 16.1-286 or [*53-1-230 66-14*] of the

Code of Virginia for the provision of residential care to children in the custody of or subject to the jurisdiction of a juvenile court or of the Department of [~~Corrections~~ Youth and Family Services].

"Discipline" means systematic teaching and training that is designed to correct, mold, or perfect behavior according to a rule or system of rules governing conduct. The object of discipline is to encourage self-direction and self-control through teaching the client to accept information, beliefs and attitudes which underlie the required conduct or behavior. The methods of discipline include, besides such instruction, positive reinforcement for exhibiting desirable behavior, as well as reasonable and age-appropriate consequences for exhibiting undesirable behavior, provided that these consequences are applied in a consistent and fair manner that gives the client an opportunity to explain his view of the misbehavior and to learn from the experience. (See also, "Behavior Management")

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

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

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

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

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

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

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from human subject in the course of

standard medical practice;

2. Epidemiological investigations; or

3. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated.

"Independent living program" means a program that is specifically approved to provide the opportunity for the clients to develop the skills necessary to live successfully on their own following completion of the program.

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

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

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

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

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

"Licensure" means the process of granting legal permission to operate a residential facility for children and to deliver program services. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the handicapped. Therefore, in this context, the term "certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

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

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

"Mechanical restraint" means the application of machinery or tools as a means of physically restraining or controlling a resident's behavior, such as handcuffs, straitjackets, shackles but not including bed straps, bed rails, slings and other devices employed to support or protect physically incapacitated children.

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

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

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

"Parent" means a parent, guardian, or an individual acting as a parent in the absence of a parental guardian. The parent means either parent unless the facility has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary. The term "parent" may include the natural mother or father, the adoptive mother or father, or the legally appointed guardian or committee who has custody of the child. The term "parent" also includes a surrogate parent appointed pursuant to provisions set forth in § II D of the Department of Education's "Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia." A child 18 years or older may assert any rights under these regulations in his own name.

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

"Physical restraint" means any act by the facility or staff which exercises the use of physical confrontation or force with residents as a method or technique of managing harmful resident behavior.

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

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

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

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

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

"Resident" means a person admitted to a residential facility for children for supervision, care, training or treatment on a 24-hour basis. For the purpose of these standards, the words, "resident," "child," "client" and "youth" are used interchangeably.

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

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and
2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals."

"Respite care facility" means a facility that is specifically approved to provide short term, periodic

residential care to children accepted into its program in order to give the parents/guardians temporary relief from responsibility for their direct care.

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

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

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

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

"Seclusion" means placing a child in a room with the door secured in any manner that will prohibit the child from opening it.

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

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

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

"Shall" means an obligation to act is imposed.

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

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

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

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

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

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

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

"Timeout procedure" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to a special timeout room that is unfurnished or sparsely furnished and, which contains few reinforcing environmental stimuli. The timeout room shall not be locked nor the door secured in any manner that will prohibit the child from opening it. (See the definitions of "Confinement Procedure," "Seclusion," "Behavior Management," and "Discipline.")

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

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

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

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the child can develop a sense of social responsibility and self worth.

Article 2. Legal Base.

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

§ 1.3. The State Board of [~~Corrections~~ *Youth and Family Services*] or the Department of [~~Corrections~~ *Youth and Family Services*] is responsible for approval of facilities used for the placement of court-referred juveniles, as specified by § 16.1-286 and §§ [~~53.1-237~~ *66-13*] and [~~53.1-239~~ *66-14*] of the Code of Virginia, for promulgating a statewide plan for detention and other care facilities and for prescribing standards for such facilities pursuant to §§ 16.1-310 through 16.1-314 of the Code of Virginia; and for establishing and maintaining a system of community group homes or other residential care facilities pursuant to § [~~53.1-249~~ *66-24*] of the Code of Virginia.

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

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

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

Article 3. Interdepartmental Agreement.

§ 1.7. An "Agreement for Interdepartmental Licensure and

Certification of Children's Residential Facilities" was approved by the Director of the Department of Corrections; the Commissioners of the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Social Services; and the Superintendent of Public Instruction and was initially signed on January 8-9, 1979. The agreement was updated effective September 30, 1984.

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

1. The joint development and application of licensure and certification standards;
2. A single coordinated licensure, certification and approval process that includes:
 - a. A single application for appropriate licensure, certification or approval;
 - b. A system for review of compliance with applicable standards;
 - c. A single license/certificate issued under the authority of the appropriate department(s) or board(s); and
 - d. Clear lines of responsibility for the enforcement of standards.
3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental licensure/certification program.

Article 4. General Licensing/Certification Requirements.

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

§ 1.9. Investigations of applications for licensure/certification will be carried out by representatives of the licensure/certification authority with each representative participating in the evaluation of

compliance with applicable standards. The decision to license or certify will be based primarily on the findings and recommendations of these representatives of the licensing/certification authority.

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

Article 5. The License/Certificate.

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

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

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

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

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

Article 6. Types of Licenses/Certificates.

§ 1.16. An annual license/certificate may be issued to a residential facility for children that is subject to the licensure authority of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services[; ;] or Social Services when its activities,

services and requirements substantially meet the minimum standards and requirements set forth in [*Core the Interdepartmental*] Standards, applicable certification standards and any additional requirements that may be specified in relevant statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

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

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

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

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

§ 1.18. An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i) the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or

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extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

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

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

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

Article 7. Preapplication Consultation Services.

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

§ 1.23. Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;
2. To help the potential applicant explore the operational demands of a licensed/certified/approved residential facility for children;
3. To provide assistance in locating sources of information and technical assistance;
4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and
5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

Article 8. The Initial Application.

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

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

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

Article 9. The Investigation.

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

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

Article 10. Allowable Variance.

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

1. Enforcement will create an undue hardship;
2. The standard is not specifically required by statute or by the regulations of another government agency; and
3. Resident care would not be adversely affected.

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

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

Article 11. Decision Regarding Licensure/Certification.

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

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

§ 1.33. Private facilities.

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

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

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

Article 13.

Intent to Deny a License, Certificate or Approval.

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

§ 1.36. Private facilities.

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

1. A statement of the intent of the licensing/certification authorities to deny;
2. A list of noncompliances and circumstances leading to the denial; and
3. Notice of the facility's rights to a hearing.

§ 1.37. Locally-operated facilities.

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

§ 1.38. State-operated public facilities.

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

§ 1.39. Out-of-state facilities.

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

be responsible for immediate removal of the children when indicated.

§ 1.40. The hearing.

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

§ 1.41. Final decision.

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

Article 14.

Renewal of License/Certificate.

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

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

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

Article 15.

Early Compliance.

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

1. The facility complies with all standards as listed on the face of the provisional or conditional license/certificate well in advance of its expiration date and the facility is in substantial compliance with all other standards;

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2. Compliance has been verified by an on-site observation by a representative(s) of the licensing/certification authority or by written evidence provided by the licensee; and

3. All other terms of the license/certificate remain the same.

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

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

Article 16.

Situations Requiring a New Application.

§ 1.47. A new application shall be filed in the following circumstances:

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

Article 17.

Modification of License/Certificate.

§ 1.48. The conditions of a license/certificate may be modified during the term of the license with respect to the number of children, the age range or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a license/certificate.

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days as to whether the modification is approved or a new license is required.

Article 18.

Visitation of Facilities.

§ 1.49. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

Article 19.

Investigation of Complaints and Allegations.

§ 1.50. The four departments are responsible for complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of children may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

Article 20.

Revocation of License/Certificate.

§ 1.51. Grounds for revocation.

The license, certificate or approval may be revoked when the licensee:

1. Violates any provision of the applicable licensing laws or any applicable standards made pursuant to such laws;
2. Permits, aids or abets the commission of any illegal act in such facility;
3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; or
4. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the licensing/certification authority and/or fails to correct such deviations within the time specified.

§ 1.52. Notification of intent to revoke.

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

§ 1.53. Private facilities.

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

1. A statement of the intent of the licensing/certification authorities to revoke;
2. A list of noncompliances and circumstances leading to the revocation; and
3. Notice of the facility's rights to a hearing.

§ 1.54. Locally-operated facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore stating the reasons for the action as well as the applicable state board or

departmental sanctions or actions to which they are liable.

§ 1.55. State-operated public facilities.

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

§ 1.56. Out-of-state facilities.

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

§ 1.57. The hearing.

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

§ 1.58. Final decision.

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

§ 1.59. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the licensing/certification authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

§ 1.60. Appeals.

A. Following receipt of the final order transmitting the

decision of the licensing/certification authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of Virginia.

PART II. ORGANIZATION AND ADMINISTRATION.

Article 1. Governing Body.

§ 2.1. The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

Article 2. Responsibilities of the Licensee.

§ 2.3. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and
2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

Article 3. Fiscal Accountability.

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§ 2.8. The facility shall have a documented plan of financing which gives evidence that there are sufficient funds to operate.

§ 2.9. A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and
2. A balance sheet showing assets and liabilities.

§ 2.11. Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. A copy of the facility's most recently completed financial audit;
2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and
3. A working budget showing projected revenue and expenses for the coming year.

§ 2.12. Facilities operated by state or local government agencies, boards and commissions that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and projected expenses for the coming year.

§ 2.13. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships that do not have a rate set in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;
2. A working budget showing projected revenue and expenses for the coming year;
3. A balance sheet showing assets and liabilities; and
4. A written assurance from the licensee that the documentation provided for in 1, 2, and 3 above

presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. The facility shall provide additional evidence of financial responsibility as the licensing authority, at its discretion, may require.

Article 4. Internal Operating Procedures.

§ 2.15. There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.16. There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

Article 5. Insurance.

§ 2.18. A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. There shall be liability insurance on vehicles operated by the facility.

Article 6. Bonding.

§ 2.20. Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

Article 7. Fund-Raising.

§ 2.21. The facility shall not use children in its fund-raising activities without written permission of parent, guardian or agency holding custody.

Article 8. Relationship to Licensing Authority.

§ 2.22. The facility shall submit or make available to the licensing authority such reports and information as the licensing authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. The governing body or its official representative shall notify the licensing authority(ies) within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and

2. Any pending changes in the program.

§ 2.24. In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;

2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and

3. Notify the licensing authority(ies) of the conditions at the facility and the status of the children in care as soon as possible.

Article 9.

Participation of Children in Research.

§ 2.25. The facility shall establish and implement written policies and procedures regarding the participation of children as subjects in research that are consistent with Chapter 13 of Title 37.1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of children as subjects of human research as defined by the above statute.

Article 10.

Children's Records.

§ 2.26. A separate case record on each child shall be maintained and shall include all correspondence relating to the care of that child.

§ 2.27. Each case record shall be kept up to date and in a uniform manner.

§ 2.28. Case records shall be maintained in such manner as to be accessible to staff for use in working with the child.

Article 11.

Confidentiality of Children's Records.

§ 2.29. The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the youth.

Article 12.

Storage of Confidential Records.

§ 2.31. Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. When not in use, records shall be kept in a locked compartment or in a locked room.

Article 13.

Disposition of Children's Records.

§ 2.34. Children's records shall be kept in their entirety for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. Permanent information shall be kept on each child even after the disposition of the child's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Child's name;
2. Date and place of child's birth;
3. Dates of admission and discharge;
4. Names and addresses of parents and siblings; and
5. Name and address of legal guardian.

§ 2.36. Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

Article 14.

Residential Facilities for Children Serving Persons Over the Age of 17 Years.

§ 2.37. Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of age, shall comply with the requirements of [*Core the Interdepartmental*] Standards for the care of all residents, regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the licensing/certification authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the children in care.

PART III. PERSONNEL.

Article 1.

Health Information.

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§ 3.1. Health information required by these standards shall be maintained for the chief administrative officer, for all staff members who come in contact with children or handle food, and for any individual who resides in a building occupied by children including any such persons who are neither staff members nor children in care of the facility.

Article 2.

Initial Tuberculosis Examination and Report.

§ 3.2. Within 30 days of employment or contact with children each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

§ 3.3. Each individual shall submit a statement that he is free of tuberculosis in a communicable form including the type(s) of test(s) used and the test result(s).

§ 3.4. The statement shall be signed by licensed physician the physician's designee, or an official of a local health department.

§ 3.5. The statement shall be filed in the individual's record.

Article 3.

Subsequent Evaluations for Tuberculosis.

§ 3.6. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

Article 4.

Physical or Mental Health of Personnel.

§ 3.7. At the request of the licensee/administrator of the facility or the licensing authority a report of examination by a licensed physician shall be obtained when there are indications that the care of children may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of children in care or which would prevent the performance of duties:

1. Shall immediately be removed from contact with children and food served to children; and
2. Shall not be allowed contact with children or food

served to children until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Article 5. Qualifications.

§ 3.9. Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

§ 3.10. Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. When services or consultations are obtained on a contract basis they shall be provided by professionally qualified personnel.

Article 6. Job Descriptions.

§ 3.12. For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;
2. The duties and responsibilities of the incumbent;
3. The job title of the immediate supervisor; and
4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

Article 7. Written Personnel Policies and Procedures.

§ 3.14. The licensee shall approve written personnel policies.

§ 3.15. The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified

in the job description for that staff position.

§ 3.17. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for discipline and behavior management of children;
2. Procedures for handling accusations against staff; and
3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during any investigation. (See § 5.143)

§ 3.18. Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

Article 8. Personnel Records.

§ 3.19. A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:
 - a. Identifying information (name, address, phone number, social security number, and any names previously utilized);
 - b. Educational history; and
 - c. Employment history.
2. Written references or notations of oral references;
3. Reports of required health examinations;
4. Annual performance evaluations; and
5. Documentation of staff development activities.

§ 3.20. Each personnel record shall be retained in its entirety for two years after employment ceases.

§ 3.21. Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

Article 9. Staff Development.

§ 3.22. New employees, relief staff, volunteers and students, within one calendar month of employment, shall

be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. Regular supervision of staff shall be provided.

§ 3.25. Regular supervision of staff shall not be the only method of staff development.

§ 3.26. Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10. Staff Supervision of Children.

§ 3.27. ~~No person shall be scheduled to work more than six consecutive days between rest days [Maximum work periods - No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency except:]~~

~~[A: No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency. Child care staff who attend training or are accompanying an excursion as permitted by §§ 3.27 A and 3.27 B shall not be in violation of this section.]~~

~~[B: 1.] A child care staff member may attend training [following working at the facility FOLLOWING WORKING AT THE FACILITY] without a rest day. However, the staff member shall not work more than 10 consecutive days between rest days including working at the facility and training.~~

~~[C: 2.] A child care staff member may accompany an excursion [following working at the facility FOLLOWING WORKING AT THE FACILITY] without a rest day. However, the staff member shall not work more than 14 consecutive days between rest days including working at the facility and the excursion.~~

~~[D: 3.] A child care staff member accompanying an excursion shall not work at the facility for more than two consecutive days [prior to the excursion PRIOR TO THE EXCURSION] .~~

~~[E: 4.] A child care staff member may return to work at the facility without a rest day [after accompanying an excursion or attending training AFTER ACCOMPANYING AN EXCURSION OR ATTENDING TRAINING] . However, [the a] staff~~

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member [who returns to work at the facility] shall not work more than six consecutive days between rest days including excursion and training days.

§ 3.28. Child care staff who have at least one 24 consecutive hour period on duty during a week shall have an average of not less than two days off rest days per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. Child care staff who do not have at least one 24 consecutive hour period on duty during a week shall have an average of not less than two days off per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. § 3.29. Child care staff who do not have at least one 24 consecutive hour period on duty during a week other than live in staff shall not be on duty more than 16 consecutive hours except in emergencies when relief staff are not available an emergency .

§ 3.29. § 3.30. There shall be at least one responsible adult on the premises and on duty at all times that one or more children are present.

§ 3.31. Each facility shall develop and implement written policies and procedures which address deployment of staff and supervision of children. The number of children being supervised may vary among staff members except that the total number of child care staff on duty shall not be less than the minimum number required by [§ 3.22 §§ 3.33 and 3.34] to supervise the total number of children on the premises and participating in off campus, facility sponsored activities.

§ 3.32. There shall be at least one child care staff member on duty in each living unit when one or more children are present. Written policies and procedures governing deployment of staff shall be reviewed and approved by the regulatory authority prior to implementation .

§ 3.33. During the hours that children normally are awake there shall be no less than one child care staff [member] awake, on duty and responsible for supervision of every 10 children present who are two years of age or older, or portion thereof, on the premises or participating in off campus, facility sponsored activities except that [the minimum number of child care staff for clients in care shall not be less than] :

1. [One In approved independent living programs, there shall be one] child care staff [for member awake, on duty and responsible for supervision of] every 15 children on the premises or participating in off campus, facility sponsored activities [of an approved independent living program] ; [and]

2. [One For children under four years of age, there shall be one] child care staff [for member awake,

on duty and responsible for supervision of] every three children [three years of age or younger] who are on the premises or participating in off campus, facility sponsored activities [: except that this requirement shall not apply to severely, multihandicapped, nonambulatory children; and]

[3. For severely multihandicapped, nonambulatory children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every six children.]

§ 3.34. During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty, and responsible for supervision of every three children present under two years of age. Supervision during sleeping hours .

A. During the hours that children normally are sleeping there shall be no less than one child care staff member on duty [for and responsible for supervision of] every 16 children, or portion thereof, on the premises.

B. There shall be at least one child care staff member awake and on duty:

1. In each building where 30 or more children are sleeping,

2. On each floor where 30 or more children are sleeping, and

3. On each major wing of each floor where 30 or more children are sleeping.

§ 3.35. In buildings where 30 or more children are sleeping there shall be no less than one child care staff member awake and on duty during night hours.

§ 3.36. There shall be at least one child care staff member awake on each floor and on each major wing of each floor where 30 or more children are sleeping.

§ 3.37. § 3.35. Emergency telephone numbers.

A. When children are away from the facility they and the adults responsible for their care during that absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

§ 3.36. Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This requirement shall not apply to medical personnel

performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

§ 3.37. Searches.

A. If a facility conducts pat downs it shall develop and implement written policies and procedures governing them. A facility that does not conduct pat downs shall have a written policy prohibiting them.

B. Written policies and procedures governing pat downs shall be reviewed and approved by the regulatory authority prior to implementation.

C. Written policies and procedures governing pat downs shall include:

1. A requirement that pat downs be limited to instances where they are necessary to prohibit contraband;
2. A listing of the specific circumstances when pat downs are permitted;
3. A statement that pat downs shall be conducted only in the specific circumstances enumerated in the written policies and procedures;
4. A requirement that pat downs be conducted by personnel of the same gender as the client(s) being searched;
5. A listing of the personnel authorized to conduct pat downs;
6. A statement that pat downs shall be conducted only by personnel authorized to conduct searches by the written policies and procedures;
7. A requirement that witnesses, if any, be of the same gender as the client(s) being searched; and
8. Provisions to ensure the client's privacy.

D. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations, or
2. As ordered by a court of competent jurisdiction.

Article 11.

The Chief Administrative Officer.

§ 3.38. The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;
2. Implementation of all policies;
3. Maintenance of the physical plant; and
4. Fiscal management of the residential facility for children.

§ 3.39. Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

Article 12.

The Program Director.

§ 3.42. The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

§ 3.43. A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or
2. A graduate degree from an accredited college or university in a profession related to child care and development; or
3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. When a facility is licensed/certified to care for 13 or more children, a full-time, qualified staff member shall fulfill the duties of the program director.

Article 13.

Child and Family Service Worker(s).

§ 3.46. If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

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§ 3.47. If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or
2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or
3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or
4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:
 - a. Social Work, or
 - b. Psychology, or
 - c. Counseling (individual, group or family).

Article 14. Child Care Staff.

§ 3.48. In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. A designated staff member shall be responsible for the coordination of all services offered to each child.

§ 3.50. A designated staff member(s) shall have responsibility for the orientation, training and supervision of child care workers.

§ 3.51. An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Discipline; and
4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. A child care worker shall be no less than 18 years of age.

§ 3.54. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and
2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

Article 15. Relief Staff.

§ 3.55. Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and
2. Unscheduled absences of permanent staff.

Article 16. Medical Staff.

§ 3.56. Services of a licensed physician shall be available for treatment of children as needed.

§ 3.57. Any nurse employed shall hold a current nursing license issued by the Commonwealth of Virginia.

§ 3.58. At all times that youth are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. At all times that youth are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

Article 17. Recreation Staff.

§ 3.60. There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;
2. A variety of skills in group activities;
3. A knowledge of community recreational facilities; and
4. An ability to motivate children to participate in constructive activities.

Article 18. Volunteers and Students Receiving Professional Training.

§ 3.61. If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. The facility shall not be dependent upon the use of volunteers/students to ensure provision of basic services.

§ 3.63. The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. All volunteers/students shall have qualifications appropriate to the services they render based on experience and/or orientation.

§ 3.66. Volunteers/students shall be subject to all regulations governing confidential treatment of personal information.

§ 3.67. Volunteers/students shall be informed regarding liability and protection.

Article 19. Support Functions.

§ 3.68. Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. Child care workers and other staff may assume the

duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. Children shall not be solely responsible for support functions.

PART IV. RESIDENTIAL ENVIRONMENT.

Article 1. Location.

§ 4.1. A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

Article 2. Buildings, Inspections and Building Plans.

§ 4.2. All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by:

1. Local fire authorities with respect to fire safety and fire hazards, except in state operated facilities;
2. State fire officials, where applicable; and
3. State or local health authorities, whose inspection and approval shall include:
 - a. General sanitation;
 - b. The sewage disposal system;
 - c. The water supply;
 - d. Food service operations; and
 - e. Swimming pools.

§ 4.4. The buildings shall be suitable to house the programs and services provided.

Article 3. Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing licensed buildings shall be submitted to and approved by the

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licensing/certification authority and the following authorities, where applicable, before construction begins:

1. Local building officials;
2. Local fire departments;
3. Local or state health departments; and
4. Office of the State Fire Marshal.

§ 4.6. Documentation of the approvals required by § 4.5 shall be submitted to the licensing authority(ies).

Article 4. Heating Systems, Ventilation and Cooling Systems.

§ 4.7. Heat shall be evenly distributed in all rooms occupied by the children such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. Natural or mechanical ventilation to the outside shall be provided in all rooms used by children.

§ 4.9. All doors and windows capable of being used for ventilation shall be fully screened unless screening particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by children when the temperature in those rooms exceeds 85°F.

Article 5. Lighting.

§ 4.11. Artificial lighting shall be by electricity.

§ 4.12. All areas within buildings shall be lighted for safety.

§ 4.13. Night lights shall be provided in halls and bathrooms.

§ 4.14. Lighting shall be sufficient for the activities being performed in a specific area.

§ 4.15. Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

Article 6. Plumbing and Toilet Facilities.

§ 4.17. All plumbing shall be maintained in good

operational condition.

§ 4.18. There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. There shall be at least one toilet, one hand basin and one shower or tub for every eight children in care.

§ 4.22. In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four children in care.

§ 4.23. When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. At all times an adequate supply of personal necessities shall be available to the children for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

§ 4.26. Clean, individual washclothes and towels shall be available once each week or more often if needed.

Article 7. Facilities and Equipment for Residents with Special Toileting Needs.

§ 4.27. When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.
2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.
3. Adapter seats and toilet chairs shall be cleaned

with warm soapy water immediately after each use.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual resident or themselves with toileting.

Article 8. Sleeping Areas.

§ 4.28. When children are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. No more than four children may share a bedroom or sleeping area.

§ 4.30. When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;
2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;
3. There shall be not less than 60 square feet of floor area per person in rooms accommodating two or more persons; and
4. All ceilings shall be at least 7-1/2 feet in height.

§ 4.33. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. Cribs shall be provided for children under two years of age.

§ 4.37. Each child shall be assigned drawer space and

closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. Smoking by any person shall be prohibited in sleeping areas.

Article 9. Privacy for Children.

§ 4.40. Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. Windows in bathrooms shall provide for privacy.

§ 4.43. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. Windows in sleeping and dressing areas shall provide for privacy.

Article 10. Living Rooms/Indoor Recreation Space.

§ 4.45. Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. In facilities licensed to care for more than 12 children there shall be indoor recreational space that contains recreational equipment appropriate to the ages and interests of the children in residence. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

Article 11. Study Space.

§ 4.47. Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

Article 12. Kitchen and Dining Areas.

§ 4.49. Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate

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for the sizes and ages of the residents.

§ 4.50. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

Article 13. Laundry Areas.

§ 4.52. If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

Article 14. Storage.

§ 4.53. Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

Article 15. Staff Quarters.

§ 4.54. A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more except, that when there are no more than four persons, including staff and family of staff, residing in and/or on duty in the living unit, a private bathroom is not required for staff.

§ 4.55. Off duty staff and members of their families shall not share bedrooms with children in care.

§ 4.56. When 13 or more children reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

Article 16. Office Space.

§ 4.58. Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

Article 17. Buildings and Grounds.

§ 4.59. Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. There shall be outdoor recreational space appropriately equipped for the children to be served.

Article 18. Equipment and Furnishings.

§ 4.61. All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or
2. Kept under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

Article 19. Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which children and staff come in contact.

Article 20. Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the

premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

Article 21. Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

Article 22. Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

Article 23. Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98. Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24-hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling

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food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing.

§ 4.105. Solid wastes which are generated in primitive camps shall be disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

Article 24.

Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent flybreeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

Article 25.

Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

Article 26.

Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated for O°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

Article 27.

Clothing in Primitive Campsites.

§ 4.130. Each child shall be provided with an adequate supply of clean clothing suitable for outdoor living

appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each child.

§ 4.132. An adequate personal storage area shall be available for each resident.

Article 28.

Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacent to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other combustion at the primitive campsite.

PART V. PROGRAMS AND SERVICES.

Article 1.

Criteria for Admission.

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures including necessary referral documentation.

§ 5.2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5.3. The facility shall accept and maintain only those

children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

Article 2.

Admission of Blind or Visually Impaired Children.

§ 5.5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not previously obtained).

§ 5.6. Provision of the services of the Department for the Visually Handicapped shall be documented in the child's record.

§ 5.7. If the services of the Department for the Visually Handicapped are not obtained the child's placement shall be considered inappropriate.

Article 3.

Interstate Compact on the Placement of Children.

§ 5.8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5.9. Documentation of approval of the compact administrator shall be retained in the child's record.

Article 4.

Documented Study of the Child.

§ 5.10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to secure detention facilities.

§ 5.11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5.12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a

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routine admission or 30 days after an emergency admission each child's record shall contain all of the elements of the documented study.

§ 5.13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the child's record):

1. A formal request or written application for admission;
2. Identifying information documented on a face sheet (see § 5.14);
3. Physical examination as specified in § 5.59;
4. Medical history (see § 5.15);
5. A statement, such as a report card, concerning the child's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;
6. Results of any psychiatric or psychological evaluations of the child, if applicable;
7. Social and developmental summary (see § 5.16);
8. Reason for referral; and
9. Rationale for acceptance.

§ 5.14. Identifying information on a face sheet shall include:

1. Full name of resident;
2. Last known residence;
3. Birthdate;
4. Birthplace;
5. Sex of child;
6. Racial and national background;
7. Child's Social Security number;
8. Religious preference of child or parents;
9. Custody status indicating name and address of legal guardian, if any;
10. Names, addresses and telephone numbers for emergency contacts, parents, guardians or representative of the child-placing agency, as applicable; and
11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the child's parents and siblings, if known;
2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the child;
3. Psychological, psychiatric and neurological examinations, if applicable;
4. Name, address and telephone number of child's former physician(s), when information is available; and
5. Name, address and telephone number of child's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

1. Description of family structure and relationships;
2. Previous placement history;
3. Current behavioral functioning including strengths, talents, and problems;
4. Documentation of need for care apart from the family setting;
5. Names, address(es), Social Security numbers, and marital status of parents; and
6. Names, ages, and sex of siblings.

Article 5.

Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's admission by documenting the following:

1. A preplacement visit by the child accompanied by a family member, an agency representative or other responsible adult;
2. Preparation through sharing information with the child, the family and the placing agency about the facility, the staff, the children and activities; and
3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

Article 6.

Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or

by written placement agreement with parents, legal guardians or other individuals or agencies having legal authority to make such an agreement except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

Article 7. Written Placement Agreement.

§ 5.19. At the time of admission the child's record shall contain the written placement agreement from the individual or agency having custody or a copy of the court order, or both, authorizing the child's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the child's placement in the facility designating the name and physical location of the facility and the name of the child;
2. Recognize the rights of each of the parties involved in the placement clearly defining areas of joint responsibility in order to support positive placement goals;
3. Include financial responsibility, where applicable;
4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;
5. Address the matter of all absences from the facility and shall specify the requirements for notifying or obtaining approval of the party having legal responsibility for the child. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the child is required.

Article 8. Emergency Admissions.

§ 5.21. Facilities other than temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and
2. Place in each child's record a written request for care or documentation of an oral request for care.

Article 9. Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;
2. A court order or a written placement agreement (see § 5.18), if the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution;

3. Identifying information documented on a face sheet which shall include:

- a. Full name of child,
- b. Birthdate,
- c. Sex of child,
- d. Racial/ethnic background,
- e. Last known address,
- f. Names and addresses of persons or agencies to contact in case of emergency,
- g. Date of admission, and
- h. Child's social security number;

4. The child's health status including:

- a. A statement of known or obvious illnesses and handicapping conditions;
- b. A statement of medications currently being taken;
- c. A statement of the child's general health status; and
- d. Name, address and telephone number of the child's physician, if known; and

5. A statement describing the child's need for immediate temporary care.

§ 5.23. When identifying information is not available the reason shall be documented on the face sheet.

Article 10. Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a child will be discharged when the child and his parents/guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

1. Criteria for a child's completion of the program as described for compliance with § 2.5; and

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2. Conditions under which a child may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each child's record shall contain the following:

1. Documentation that the termination of care has been planned with the parent/guardian/child-placing agency and with the child; and

2. A written discharge plan and documentation that it was prepared and discussed with the child, when appropriate, prior to the child's discharge. The plan shall contain at least:

a. An assessment of the child's continuing needs; and

b. A recommended plan for services in the youth's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the child's record shall contain the following information:

1. Date of discharge;

2. Reason for discharge;

3. Documentation that the reason for discharge was discussed with the parent/guardian/child-placing agency and, when appropriate, with the child, except that this requirement does not apply to court ordered discharges;

4. Forwarding address of the child, if known;

5. Name and address of legally responsible party to whom discharge was made; and

6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the child's record no later than 30 days after discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

1. Length of a child's residence at the time of discharge;

2. The name of the child's designated case coordinator, if assigned;

3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;

4. Summary of the child's overall progress during placement;

5. Summary of family contracts during placement, if any; and

6. Reasons for discharge.

§ 5.30. Except in secure detention, children shall be discharged only to the legally responsible party from whom they were accepted except (i) in cases where legal responsibility has been transferred to another person or agency during the period of the child's stay in the facility or (ii) in cases where a child committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

Article 11.

Placement of Children Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a child away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

Article 12.

Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each child, within 30 days of admission and placed in the child's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

§ 5.33. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan:

1. The child;

2. The child's family or legally authorized representative;

3. The placing agency; and

4. Facility staff.

§ 5.34. The degree of participation, or lack thereof, of each of the parties listed in § 5.33 in developing the service plan shall be documented in the child's record.

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following:

1. A statement of the resident's current level of

functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;

2. A statement of goals and objectives meeting the above identified needs;
3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;
4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;
5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;
6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and
7. The estimated length of the resident's stay.

Article 13. Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each child's record and shall include:

1. Reports of significant incidents, both positive and negative;
2. Reports of visits with the family;
3. Changes in the child's family situation;
4. Progress made toward the goals and objectives described in the Service Plan required by § 5.32;
5. School reports;
6. Discipline problems in the facility and the community;
7. Summary of the child's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;
8. Reevaluation of the placement including tentative discharge plans.

Article 14. Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate,

unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the child's current level of functioning and needs:

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the child's record except that this section does not apply to secure detention facilities.

§ 5.39. Staff responsible for the daily implementation of the child's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual children except that this section does not apply to secure detention facilities.

§ 5.40. Staff responsible for daily implementation of the child's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities.

Article 15. Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each child admitted to a temporary care facility and placed in the child's master file within 72 hours of admission.

§ 5.42. The individualized service plan shall include:

1. The child's description of his situation/problem;
2. Documentation of contact with the child's parent or guardian to obtain his description of the child's situation/problem;
3. The facility staff's assessment of the child's situation/problem;
4. A plan of action including:
 - a. Services to be provided,
 - b. Activities to be provided,
 - c. Who is to provide services and activities, and
 - d. When services and activities are to be provided;
5. The anticipated date of discharge, and

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6. An assessment of the child's continuing need for services.

Article 16. Counseling and Social Services.

§ 5.43. For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the child and the parents or guardian to understand the effects on the child of separation from the family and the effect of group living;
2. Assisting the child and the family in maintaining their relationships and planning for the future care of the child;
3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;
4. Helping the child with problems affecting the ability to have satisfying personal relationships and use of the capacity for growth;
5. Conferring with the child care staff to help them understand the child's needs in order to promote adjustment to group living; and
6. Working with the child and with the family or any placing agency that may be involved in planning for the child's future and in preparing the child for return home, for independent living, or for other residential care.

§ 5.44. The provision of counseling and social services shall be documented in each child's record except that this section does not apply to secure detention facilities.

§ 5.45. For all facilities, except secure detention facilities, counseling and/or other social services consistent with the goals of the Service Plan shall be provided to meet the specific needs of each child in one of the following ways:

1. By a qualified staff member;
2. By service staff of the agency that placed the child provided such staff is available on an as needed basis rather than on a limited basis (e.g. quarterly or semiannually);
3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or
4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency

sponsored by a community based group.

Article 17. Residential Services.

§ 5.46. There shall be evidence of a structured program of care that is designed to:

1. Meet the child's physical needs;
2. Provide protection, guidance and supervision;
3. Promote a sense of security and self-worth; and
4. Meet the objectives of any required service plan.

§ 5.47. There shall be evidence of a structured daily routine that is designed to assure the delivery of program services.

§ 5.48. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by children including health and dental complaints or injuries.

§ 5.49. Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. Routines shall be planned to assure that each child shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the children.

Article 18. Health Care Procedures.

§ 5.52. Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;
2. Routine ongoing and follow-up medical and dental services after admission; and
3. Emergency services for each child as provided by statute or by agreement with the child's parent(s) or legal guardian, or both.

§ 5.53. For all facilities except temporary care facilities written information concerning each child shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician or dentist, or both, to be notified;
2. Name, address, and telephone number of relative or

other person to be notified;

3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;

4. Information concerning:

- a. Use of medication,
- b. Medication allergies,
- c. Any history of substance abuse except that this requirement does not apply to secure detention, and
- d. significant medical problems; and

5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

§ 5.54. Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

Article 19. Physical Examinations.

§ 5.55. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. Following the initial examination, each child shall have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or
2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. Each physical examination report shall be included in the child's record.

§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;
2. Visual acuity;
3. Auditory acuity;
4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;
5. Allergies, chronic conditions, and handicaps, if any;
6. Nutritional requirements, including special diets, if any;
7. Restriction of physical activities, if any;
8. Recommendations for further treatment, immunizations, and other examinations indicated;
9. The date of the physical examination; and
10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.60. In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing other children in care and staff; and
2. The facility is aware of the required treatment for the child and procedures to protect other children in care and staff.

§ 5.61. Recommendations for follow-up medical observation and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. Except for (i) secure detention facilities, (ii) temporary care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and
2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each child.

§ 5.63. Each child's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

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§ 5.64. Each child's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. Provision shall be made for suitable isolation of any child suspected of having a communicable disease.

§ 5.66. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

Article 20. Medication.

§ 5.67. All medication shall be securely locked and properly labeled.

§ 5.68. Medication shall be delivered only by staff authorized by the director to do so.

§ 5.69. Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. A program of medication shall be instituted for a specific child only when prescribed in writing by a licensed physician.

§ 5.71. Medications that are classified as "controlled substances" as defined in § 54.1-3401 of the Code of Virginia shall only be obtained from a licensed physician or from a licensed pharmacist upon individual prescription of a licensed physician.

§ 5.72. A daily log shall be maintained of all medicines received by the individual child.

§ 5.73. The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

Article 21. Nutrition.

§ 5.76. Provisions shall be made for each child to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept

on file for at least six months.

§ 5.80. The daily diet for children shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the children in care.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the child shall be observed.

§ 5.84. Staff who eat in the presence of the children shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the evening meal and breakfast the following day.

Article 22. Discipline and Management of Resident Behavior.

§ 5.86. The facility shall have written disciplinary and behavior management policies, including written rules of conduct, appropriate to the age and developmental level of the children in care.

§ 5.87. Disciplinary and behavior management policies and rules of conduct shall be provided to children, families and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided within 72 hours after admission.

§ 5.88. There shall be written procedures for documenting and monitoring use of the disciplinary and behavior management policies.

§ 5.89. Control, discipline and behavior management shall be the responsibility of the staff.

Article 23. Confinement Procedures.

§ 5.90. When a child is confined to his own room as a means of discipline, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.91. Any child confined to his own room shall be able to communicate with staff.

§ 5.92. There shall be a staff check on the room at least every 30 minutes.

§ 5.93. The use of confinement procedures shall be documented.

Article 24. Prohibitions.

§ 5.94. The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a client's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;
2. Denial of contacts and visits with attorney, probation officer, or placing agency representative;
3. Denial of contacts and visits with family or legal guardian except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
5. Any action which is humiliating, degrading, or abusive;
6. Corporal punishment except as permitted in a public school or a school maintained by the state pursuant to § 22.1-280 of the Code of Virginia ;
7. Subjection to unsanitary living conditions;
8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;
9. Deprivation of health care including counseling;
10. Intrusive aversive therapy except as permitted by other applicable state regulations;
11. Application of aversive stimuli except as part of an intrusive aversive therapy plan approved pursuant to other applicable state regulations;
12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;
13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record; and
14. Denial of contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and

advocates employed by the Department for Rights of the Disabled to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.

Article 25. Chemical or Mechanical Restraints.

§ 5.95. The use of mechanical or chemical restraints is prohibited unless use is specifically permitted by a special license or certification module.

Article 26. Physical Restraint.

§ 5.96. A child may be physically restrained only when the child's uncontrolled behavior would result in harm to the child or others and when less restrictive interventions have failed.

§ 5.97. The use of physical restraint shall be only that which is minimally necessary to protect the child or others.

§ 5.98. If the use of physical restraint or the use of other measures permitted by a certification module is unsuccessful in calming and moderating the child's behavior the child's physician, the rescue squad, the police or other emergency resource shall be contacted for assistance.

§ 5.99. Any application of physical restraint shall be fully documented in the child's record as to date, time, staff involved, circumstances, reasons for use of physical restraint, and extent of physical restraint used.

Article 27. Seclusion.

§ 5.100. Secluding a child in a room with the door secured in any manner that will prohibit the child from opening it shall be prohibited unless it is specifically permitted by a special license or certification module.

Article 28. Timeout Procedures.

§ 5.101. Timeout procedures may only be used at times and under conditions specified in the facility's disciplinary or behavior management policies.

§ 5.102. When a child is placed in a timeout room, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it.

§ 5.103. Any child in a timeout room shall be able to communicate with staff.

§ 5.104. The use of timeout procedures shall not be used for periods longer than 30 consecutive minutes.

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§ 5.105. Written documentation shall be maintained verifying that each child placed in a timeout room has been checked by staff at least every 15 minutes.

§ 5.106. A child placed in a timeout room shall have bathroom privileges according to need.

§ 5.107. If a meal is scheduled while a child is in timeout, the meal shall be provided to the child at the end of the timeout procedure.

Article 29. Education.

§ 5.108. Each child of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. The facility shall provide educational guidance and counseling for each child in selection of courses and shall ensure that education is an integral part of the child's total program.

§ 5.110. Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

§ 5.111. When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the child's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

Article 30. Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the children to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the child and any individual or agency considering the placement of a child in the facility.

§ 5.115. Children shall not be coerced to participate in religious activities.

Article 31. Recreation.

§ 5.116. There shall be a written description of the recreation program for the facility showing activities which

are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the children and which includes:

1. Opportunities for individual and group activities;
2. Free time for children to pursue personal interests which shall be in addition to a formal recreation program;
3. Except in secure detention facilities, use of available community recreational resources and facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of losing, etc.).

§ 5.117. The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific activities.

§ 5.118. Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the children.

Article 32. Community Relationships.

§ 5.119. Opportunities shall be provided for the children in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. Community interest in children and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the children.

Article 33. Clothing.

§ 5.121. Provisions shall be made for each child to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. Children shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. Each child's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. The child shall be allowed to take personal clothing when the child leaves the facility.

Article 34. Allowances and Spending Money.

§ 5.126. The facility shall provide opportunities appropriate to the ages and developmental levels of the children for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. The written policy regarding allowances shall be made available to parents or guardians, or both, at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. The facility shall provide for safekeeping and for record keeping of any money that belongs to children.

Article 35. Work and Employment.

§ 5.130. Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the child.

§ 5.131. Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the parent, guardian or placing agency except that this section does not apply to secure detention facilities.

§ 5.133. The facility shall ensure that any child employed inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a child shall accrue to the sole benefit of that child.

Article 36. Visitation at the Facility and to the Child's Home.

§ 5.135. The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges

and flexible visiting hours.

§ 5.136. Copies of the written visitation policies and procedures shall be made available to the parents, guardians, the child and other interested persons important to the child no later than the time of admission except that when parents or guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

Article 37. Use of Vehicles and Power Equipment.

§ 5.137. Any transportation provided for or used by children shall be in compliance with state, federal or international laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles; and
3. Licensure of drivers.

§ 5.138. There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. There shall be written safety rules for the use and maintenance of vehicles and power equipment.

Article 38. Reports to Court.

§ 5.140. When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virginia) submitted to the court shall be filed in the child's record except that this section does not apply to secure detention facilities.

Article 39. Emergency Reports.

§ 5.141. Any serious incident, accident or injury to the child; any overnight absence from the facility without permission; any runaway; or any other unexplained absence shall be reported to the parent/guardian/placing agency within 24 hours.

§ 5.142. The child's record shall contain:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the parent/guardian or placing agency; and

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6. The name of the person to whom the report was made.

Article 40. Suspected Child Abuse or Neglect.

§ 5.143. Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. The child's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident;
3. Action taken as a result of the incident; and
4. Name of the person to whom the report was made at the local department.

PART VI. DISASTER OR EMERGENCY PLANS.

Article 1. Procedures for Meeting Emergencies.

§ 6.1. Established written procedures shall be made known to all staff and residents, as appropriate for health and safety, for use in meeting specific emergencies including:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation including alternate housing.

Article 2. Written Fire Plan.

§ 6.2. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of residents with special needs, and checking to ensure complete evacuation of the building(s);

3. A system for alerting fire fighting authorities;

4. Use, maintenance and operation of fire fighting and fire warning equipment;

5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;

6. Posting of floor plans showing primary and secondary means of egress; and

7. Other special procedures developed with the local fire authority.

§ 6.4. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.

§ 6.6. The procedures and responsibilities reflected in the written fire plan shall be made known to all staff and residents.

Article 3. Posting of Fire Emergency Phone Number.

§ 6.7. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

Article 4. Portable Fire Extinguishers.

§ 6.8. Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 140 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to

ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

Article 5. Smoke Alarms.

§ 6.13. Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and properly installed smoke detector:

1. In each bedroom hallway;
2. At the top of each interior stairway;
3. In each area designated for smoking;
4. In or immediately adjacent to each room with a furnace or other heat source; and
5. In each additional location directed by the local building official, the local fire authority, or the state fire authority.

§ 6.14. Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Article 6. Fire Drills.

§ 6.17. At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by children.

§ 6.18. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures;
3. Practice in alerting fire fighting authorities;
4. Simulated use of fire fighting equipment;
5. Practice in fire containment procedures; and
6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. False alarms shall not be counted as fire drills.

§ 6.21. The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;
2. Date of drill;
3. Time of drill;
4. Amount of time to evacuate building;
5. Specific problems encountered;
6. Staff tasks completed:
 - a. Doors and windows closed,
 - b. Head count,
 - c. Practice in notifying fire authority, and
 - d. Other;
7. Summary; and
8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the

Final Regulations

facility's written fire plan;

2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;

3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and

4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

Article 7.

Staff Training in Fire Procedures.

§ 6.25. Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

Article 8.

"Sighted Guide" Training for Emergency Use.

§ 6.27. When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities.

§ 6.28. "Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities.

* * * * *

Title of Regulation: VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.

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

Effective Date: April 1, 1991.

Summary:

When an application for ADC is approved, the date of entitlement to benefits depends on the date the determination of eligibility is made. When an application is determined eligible in the month of application, the date of entitlement is the date of authorization. When the application is determined

eligible after the month of application, entitlement is to begin the first of the month following the month of application. Such an amendment will bring Virginia's ADC date of entitlement policy into compliance with 45 CFR 206.10.

VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.

PART I. DEFINITIONS.

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

"Date of entitlement" means the date assistance begins.

"Application" means a written request for financial assistance received by the local social services agency.

"Date of authorization" means the date the application is determined to be eligible by the local eligibility worker signs and dates an evaluation form indicating eligibility has been determined.

PART II. DATE OF ENTITLEMENT.

§ 2.1. When eligibility for financial assistance is determined in the same month in which the application is received, entitlement will begin effective the date of application authorization. If eligibility is not determined in the same month in which the application is received, the date of entitlement will begin effective the first of the month following the month of application.

* * * * *

Title of Regulation: VR 615-01-35. Monthly Reporting in the Food Stamp Program.

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

Effective Date: April 1, 1991.

Summary:

Households which are required by rules published under the Aid to Dependent Children (ADC) Program to file monthly reports of household circumstances must also file such reports each month for the Food Stamp Program.

The final regulation contains revisions made to increase the cost savings of the proposal from approximately \$1,000 per month to \$24,000 per month, and to increase expected work reduction in local departments of social services from under 1,000 man hours per month to 22,400 man hours per month.

VR 615-01-35. Monthly Reporting in the Food Stamp Program.

§ 1. Food stamp program - monthly reporting.

[The following households which receive food stamps shall be subject to monthly reporting requirements:]

[1.] Households which [receive Food Stamp Program benefits and which] contain a member required to file a [monthly] report in the Aid to Dependent Children (ADC) Program, [shall be subject to the monthly reporting requirements for the Food Stamp Program,] even if there are non-ADC recipients in the food stamp household.

[2. All households with countable earnings, unless total earned income for the household is from self-employment or contract income, even if the household contains ADC recipients who are not required to monthly report for ADC.]

STATE CORPORATION COMMISSION

STATE CORPORATION COMMISSION

Bureau of Insurance

January 29, 1991

Administrative Letter 1991-1

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 § 38.2-1905.2.

The 1990 General Assembly amended Virginia Code § 38.2-1905.1 to permit the biennial (in lieu of annual) designation by the State Corporation Commission (SCC) of lines and subclassifications of insurance where it believes competition may not be an effective regulator of rates. The Commission's most recent designation of troubled lines was in its report dated December, 1989. Due to the amendments mentioned above, no report was issued in December, 1990 and the next report will be issued by the SCC later in 1991.

The issuance of a report designating lines and subclassifications triggers a data call of Supplemental Reports as required by § 38.2-1905.2. While the next Supplemental Reports will not be due until May 1, 1992, the data call will include the years 1990 and 1991.

The purpose of this Administrative Letter is to advise that when the Commission's report is issued later this year insurers will be sent a listing of the potentially noncompetitive lines and subclassifications of commercial liability insurance so that they may begin collecting the data due May 1, 1992. Insurers will be advised of any changes in the Supplemental Report format at that time. Please advise the appropriate data reporting departments that no Supplemental Reports are due in 1991 and that each insurer will be receiving additional reporting instructions later this year.

* * * * *

Bureau of Insurance

January 29, 1991

Administrative Letter 1991-2

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Report of Certain Liability Claims as Required by Virginia Code § 38.2-2228.1 due September 1, 1991.

Virginia Code § 38.2-2228.1 requires that all liability claims for commercial liability insurance as defined in §§ 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 ((1) general instructions and definitions, (2) exemption request form, (3) market definitions and, (4) diskette file instructions) and reporting forms that insurers should utilize to meet the data reporting requirement of the Code.

A separate report is required 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 group of insurers under common ownership or control. A combined report must indicate it is a group report and include the group name and NAIC number as well as the name and NAIC number of each individual insurer comprising the group. The reports, or exemption forms must be filed by September 1, 1991.

Mutual assessment insurers are exempt from all reporting requirements. All other insurers with 1990 written premiums combined totaling \$100,000 or less for "Other Liability" and "Medical Professional Liability" (lines 17 and 11 respectively of page 14 of the Annual Statement) 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).

Insurers 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.

Insurers who are members or subscribers of Insurance Services Office (ISO) should contact their liaison officer for assistance regarding the computerized transmission of data. Other insurers not affiliated with ISO should write to the Property and Casualty Division of the Bureau of Insurance requesting assistance.

Should you have any questions, please direct them to:

Eric C. Lowe
Insurance Market Examiner
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23209
Telephone: (804) 786-1628

Virginia Code § 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 subject to an appropriate penalty.

* * *

EXHIBIT 1 GENERAL LIABILITY CLAIMS REPORTING COMPLETION 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. 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, 1991.

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 1990 for 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 has a combined written premium in 1990 totaling \$100,000 or less for line 17 - Other 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 further action regarding this Administrative Letter is required.

NOTE: Insurers exempted under A or B above must file Exhibit 2 by September 1, 1991, 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 insurers 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 1990. 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, 1991. Failure to submit by this date may subject the insurer to penalties as outlined in the Administrative Letter.

III. INSURERS REPORTING ON DISKETTE:

A. A diskette containing the requested information will only be accepted from the insurer if Exhibit 4, request for file structure and layout, is submitted to Eric C. Lowe at the address shown in the Administrative Letter.

B. Submission of diskette not formatted in the requested file structure and layout will be returned, marked unaccepted.

C. Deductible and nondeductible liability data should be combined within market definitions.

D. Bodily Injury, Property Damage, and Medical payments should be combined within market definitions.

E. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1990.

F. The diskette and Exhibit 2 must be filed by September 1, 1991. Failure to submit by this date may subject Insurers to penalties as outlined in the Administrative Letter.

IV. 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 type. Coverage types are shown on VCR1 (1/10/91) and market definitions are shown in Exhibit 3. **Do not combine markets or**

State Corporation Commission

sublines and do not separate classifications within a market definition.

witnesses, stenographic, summons and copies of documents.

C. Deductible and nondeductible liability data should be combined within market definitions.

D. Bodily Injury, Property Damage, and Medical payments should be combined within market definitions.

E. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1990.

F. The reports and Exhibit 2 must be filed by September 1, 1991. Failure to submit by this date may subject Insurers to penalties as outlined in the Administrative Letter.

VIRGINIA LIABILITY CLAIMS REPORT DEFINITIONS

CALENDAR YEAR EARNED PREMIUM

Report premium that is earned during the Calendar year beginning January 1 and ending December 31 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 known 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 evaluation points indicated up to 108 months for IBNR (VCR6) and 114 months for all other (VCR 2-5) requested information.

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

EXHIBIT 2
EXEMPTION REQUEST FORM

INSURER _____ NAIC # _____

Check Column A when you had no written premium in 1990. Check Column B when you had 1990 written premiums of \$100,000, or less, for "Other Liability" and "Medical Professional Liability" combined (lines 17 and 11 respectively of page 14 of the Annual Statement).

	Column A Zero Premium	Column B 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 AND 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 RATED RISKS AND EXCESS INSURANCE NOT INCLUDED IN C0036	_____	_____

Signed: _____ Title: _____
 Telephone: _____ Print Name: _____
 Date: _____

EXHIBIT 3

Market Number and Name	Market Definitions 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	Subline 317 Classes 81220, 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

State Corporation Commission

VIRGINIA LIABILITY CLAIMS REPORT

Coverage

Insurer
NAIC # or GROUP # _____

- 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

7. Market _____
(from #1 on VCR1)

8. For accident years beginning with 1981, list the cumulative paid loss and allocated loss adjustment expense at the various points in time.

PAID LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED AS OF:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1981	XXX																	
1982	XXX																	
1983	XXX																	
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1981																		
1982																		
1983																		
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		

VCR2(1/91)

VIRGINIA LIABILITY CLAIMS REPORT

Coverage

Insurer
NAIC # or GROUP # _____

- 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

Market _____
(from #1 on VCR1)

9. For accident years beginning with 1981, 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 AS OF:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1981	XXX																	
1982	XXX																	
1983	XXX																	
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1981																		
1982																		
1983																		
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		

VCR3(1/91)

State Corporation Commission

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 1981, list the cumulative incurred loss and allocated loss adjustment expense (excluding IBER) at the various points in time. (sum of 8 and 9).

INCURRED LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED AS OF:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1981	XXX																	
1982	XXX																	
1983	XXX																	
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1981																		
1982																		
1983																		
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		

VCR4(1/91)

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 # _____

Market _____
(from #1 on VCR1)

12. For accident years beginning with 1981, list the cumulative number of incurred claims at the various points in time.

ACTUAL NUMBER OF INCURRED CLAIMS AS OF:

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1981	XXX																	
1982	XXX																	
1983	XXX																	
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1981																		
1982																		
1983																		
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		

VCR5(1/91)

State Corporation Commission

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 data
- 5. Claims Made Tail - No retroactive data

Insurer _____

NAIC # or GROUP # _____

13. Market _____
(from #1 on VCR1)

14. For accident years beginning with 1981, list the IBAR for loss and allocated loss adjustment expense for each evaluation.

INCURRED BUT NOT REPORTED (IBNR) LOSS AND ALLOCATED: LOSS ADJUSTMENT EXPENSE EVALUATED AS OF:

(\$000 Omitted)

Accident Year	12 Mos	24	36	48	60	72	84	96	108
1981									
1982									
1983									
1984									
1985									
1986									
1987									
1988									
1989									
1990									

VCR6(1/91)

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF COMMERCE

Title of Regulation: VR 190-03-01. Regulations Governing Polygraph Examiners.

Governor's Comment:

The proposed regulations, in accordance with the Callahan Act, would reduce fees charged by the Department of Commerce's Polygraph Examiners Licensing Program. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: February 2, 1991

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-02. Board for Hearing Aid Specialists Regulations.

Governor's Comment:

The proposed regulations would incorporate two fees that were adopted in 1989 by the Board for Hearing Aid Specialists into the Board's regulations. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: February 2, 1991

REAL ESTATE BOARD

Title of Regulation: VR 585-01-1. Virginia Real Estate Board Licensing Regulations.

Governor's Comment:

The proposed regulations, in accordance with the Callahan Act, would enable the Virginia Real Estate Board to cover administrative expenses. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: February 3, 1991

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Chesapeake Bay Local Assistance Board intends to consider amending regulations entitled: **VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.** The purposes of the proposed action are to:

1. Compress deadlines for adoption of local programs pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Code of Virginia) from two separate and consecutive one-year adoption periods for various parts of the program into a single one-year adoption period for all parts of the program;
2. Clarify the kinds of roads and streets exempted as "public roads" by § 4.5 B 1 of the regulations, and establish conditions which roads, streets and driveways must satisfy in order to cross Resource Protection Areas;
3. Establish a specific date of subdivision for exempting lots that cannot comply with buffer area and reserve septic system drainfield requirements; and
4. Change the effective date of the regulations in order to supersede Emergency Regulations (VR 173-02-01.1) adopted by the Board on November 15, 1990, and amended and readopted on December 3, 1990, and approved by the Governor. The emergency regulations already incorporate the compression of local program adoption deadlines and the buffer and reserve drainfield effective date proposed in Nos. 1 and 3 above.

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Written comments may be submitted until 5 p.m., March 27, 1991.

Contact: Scott Crafton, Regulatory Assistance Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7729.

DEPARTMENT OF COMMERCE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider amending regulations entitled: **VR 190-04-01. Private Security Services Business Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines and bring into compliance the cycle for renewing licenses, registrations, and certifications according to new requirements for compulsory minimum training standards for Private Security Services Business Personnel recently adopted by the Criminal Justice Services Board. Other changes to the regulations which may be necessary will be considered.

Statutory Authority: §§ 54.1-100 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 1, 1991.

Contact: Gerlde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

COUNCIL ON THE ENVIRONMENT

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Council on the Environment intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to establish public participation guidelines governing the Council on the Environment.

Statutory Authority: §§ 10.1-1206 and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

General Notices/Errata

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Council on the Environment intends to consider promulgating regulations entitled: **Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia**. The purpose of the proposed action is to promulgate criteria and procedures for preparing environmental impact assessments required for oil or gas well drilling activities in Tidewater Virginia.

State law requires that persons intending to drill for oil or gas in any area of Tidewater Virginia (defined in § 62.1-13.2 of the Code of Virginia) shall submit to the Department of Mines, Minerals and Energy, as part of the permit application to drill, an environmental impact assessment (EIA). The EIA must include a discussion of:

1. The probabilities and consequences of accidental discharges of oil or gas to the environment during drilling, production and transportation on:
 - a. Finfish, shellfish and other marine and freshwater organisms,
 - b. Birds and other wildlife,
 - c. Air and water quality, and
 - d. Land and water resources;
2. Recommendations for minimizing any adverse economic, fiscal or environmental impacts; and
3. An examination of the secondary environmental effects of induced economic development during drilling and production.

The content of an EIA is governed by the statute cited below. A copy of the statute may be obtained by contacting the person indicated below.

The Council on the Environment will hold a meeting to gather information on and to receive comments on issues related to the development of this regulation on March 5, 1991, beginning at 9 a.m. in Senate Room 4, State Capitol Building, Richmond, Virginia.

Statutory Authority: §§ 10.1-1206 and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider amending regulations entitled: **Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel**. The purpose of the proposed action is to amend and revise Compulsory Minimum Training Standards for Private Security Services Business Personnel.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until March 15, 1991, to Lex T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia.

Contact: Paula Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **Board of Dentistry Regulations**. The purpose of the intended action is to receive comments on the topics, as follows:

1. The propriety of promulgating regulation to permit the licensing of specialists.
2. Change in the number of Dental Hygienists supervised by a dentist.
3. General supervision of those duties performed by dental auxiliaries presently permitted by current regulation.
4. All current regulations.

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

Written comments may be submitted until March 4, 1991.

Contact: Nancy Taylor Feldman, Executive Director, Virginia Board of Dentistry, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9906.

Notice of Intended Regulatory Action

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

the proposed action is to amend the regulations to require the name of the dental assistant providing service. Currently, the only names required for providing service are the dentist and the dental hygienist in § 4.1(B) (7) of the existing regulation.

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

Written comments may be submitted until March 4, 1991.

Contact: Nancy Taylor Feldman, Executive Director, Virginia Board of Dentistry, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

BOARD FOR GEOLOGY

† Notice of Intended Regulatory Action

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

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

Written comments may be submitted until April 8, 1991.

Contact: Nelle P. Hotchkiss, Assistant Director, Asbestos Licensing Program, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration, and Scope of Services: Reduction of Threshold Days for Inpatient Utilization Review.** The purpose of the proposed action is to reduce the number of days allowed for inpatient hospital lengths of stay before the providers' claims require manual review.

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

Written comments may be submitted until March 1, 1991, to James Cohen, Manager, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Client Medical Management.** The purpose of the proposed action is to increase the client medical management caseload to targeted levels by expediting utilization review procedures.

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

Written comments may be submitted until March 1, 1991, to David Austin, Director, Division of Program Compliance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **1991 Obstetric/Pediatric Maximum Payments.** The purpose of the proposed action is to increase the maximum payment amounts of specific obstetric and pediatric procedure codes contained in Attachment 4.19 B, Supplement 1. These fees were mandated for inclusion in the State Plan for Medical Assistance by the Omnibus Budget Reconciliation Act of 1989, § 6402.

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

Written comments may be submitted until March 1, 1991, to C. Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to amend the definitions to define the home/extended care facilities or institutions in which physical therapy services are provided, and to amend § 5.3 Supervision of traineeship

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and § 6.1 Supervision of physical therapist assistants.

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

Written comments may be submitted until March 25, 1991, to Board of Medicine, 1601 Rolling Hills Drive, Richmond, VA 23229-5005.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **The Virginia Energy Assistance Program**. The department is planning to utilize policies and procedures implemented in the 1990-1991 Energy Assistance Program for the 1991-92 Energy Assistance Program. The department is reviewing a proposal to begin the Fuel Assistance and Crisis Assistance Components on December 1, 1991.

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

Written comments may be submitted until March 25, 1991.

Contact: Charlene H. Chapman, Program Manager, Bureau of Energy and Emergency Assistance, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229, telephone (804) 662-9727.

TREASURY BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Treasury Board intends to consider amending regulations entitled: **VR 640-02. Virginia Security for Public Deposits Act Regulations**. The purpose of the proposed regulation is to provide adequate protection for public funds on deposit in financial institutions in light of recent changes within financial institutions and in the types of securities being pledged as collateral under the Act.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Written comments may be submitted until March 15, 1991.

Contact: Linda M. Brendel, Senior Policy Analyst, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-2268.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **Yard Waste Composting Regulations**. The purpose of the proposed action is to provide for certain exemptions from the permitting requirements contained in Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10) and certain substantive facility standards contained in § 6.1 of VR 672-20-10, in order to encourage the development of yard waste composting facilities as required by § 10.1-1408.1 K of the Code of Virginia.

These proposed regulations would make permanent the emergency regulations entitled **Yard Waste Compost Regulations (VR 672-20-31)** adopted on September 10, 1990.

Statutory Authority: § 10.1-1408.1 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: S. T. Ashton IV, Environmental Program Analyst, Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2867.

GENERAL NOTICES

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† EDITOR'S NOTICE: The Public Participation Procedures of the Chesapeake Bay Local Assistance Board are republished in their entirety in the Final Regulations section of this issue of the Virginia Register. Language which was omitted in §§ 5.1, 5.2 and 5.7 when they were published as final regulations in 6:9 V.A.R. 1280-1281, January 29, 1990, is included. Changes are noted in brackets.

DEPARTMENT OF WASTE MANAGEMENT

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of § 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director intends to designate a solid waste management region for the local governments of Montgomery County and the Towns of Blacksburg and

Christiansburg. The County of Montgomery will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments and Virginia Polytechnic Institute and State University.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on March 11, 1991, to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. FAX 804-225-3753, TDD 804-347-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Contact: Cheryl Cashman, Legislative Liaison, telephone 1-800-552-2075 or (804) 225-2667.

† Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of § 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director intends to designate a solid waste management region for the local governments of the County of Giles and the Towns of Glen Lyn, Narrows, Pearisburg, Pembroke and Rich Creek. Giles County will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Monday, March 25, 1991, to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. FAX 804-225-3753, TDD 804-347-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Contact: Cheryl Cashman, Legislative Liaison, telephone 1-800-552-2075 or (804) 225-2667.

† Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of § 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director intends to designate a solid waste management region for the local governments of Prince William County and the Towns of Dumfries, Haymarket, Occoquan and Quantico. Prince William County will be designated the legal entity for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Monday, March 25, 1991, to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. FAX 804-225-3753, TDD 804-347-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Contact: Cheryl Cashman, Legislative Liaison, telephone 1-800-552-2075 or (804) 225-2667.

NOTICES TO STATE AGENCIES

CHANGE OF ADDRESS: Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed in copy. Our FAX number is: 371-0169.

RE: 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

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23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION -
RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE
OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET
(Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

† March 4, 1991 - 10 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☒

A meeting to consider (i) regulatory review - continuing professional education; (ii) routine board business; (iii) new business; and (iv) old business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT FOR THE AGING

† March 1, 1991 - 9 a.m. - Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A general business meeting of the Long-Term Care Council.

Contact: Janet Lynch, Director, Long-Term Care, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 371-0552 or (804) 225-2271/TDD ☎

Long-Term Care Ombudsman Program Advisory Council

March 28, 1991 - 9:30 a.m. - Open Meeting
8007 Discovery Drive, Blair Building, 2nd Floor,
Conference Room A and B, Richmond, Virginia. ☒

Business will include review of goals and objective. Meeting attendees will include representatives of legislative groups concerned with aging issues.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-3141, toll-free 1-800-552-3402 or 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

† May 10, 1991 - 10:30 a.m. - Public Hearing
Sheraton Airport Inn, Salons A and B of Ballroom, 4700 South Laburnum Avenue, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled: VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law. The 1989 Virginia Pesticide Control Act authorizes the Pesticide Control Board to adopt regulations to accomplish the Act's purpose. To this end, the board has proposed VR 115-04-23, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act. Parts of this proposed regulation are intended to supersede § 21, "Categories for commercial applicators"; § 22, Standards of certification of commercial applicators"; § 24, Standards for certification of private applicators"; and § 25, "Standards for application of pesticides classified for restricted use by noncertified applicators" of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law. The provisions of VR 115-04-03 are to remain in effect, according to the Act, "until repealed by the Pesticide Control Board." The purpose of this regulatory action is to propose the repeal of these four identified sections of VR 115-04-03.

STATEMENT

Purpose: The purpose of the proposed action is to repeal

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four sections of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law—specifically § 21, “Categories for commercial applicators”; § 22, “Standards of certification of commercial applicators”; § 24, “Standards for certification of private applicators”; and § 25, Standards for application of pesticides classified for restricted use by noncertified applicators.” Parts of a proposed new regulation, VR 115-04-23, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, are in conflict with these four sections. The provisions of the current regulation are to remain in force and effect, according to the Pesticide Control Act, “until repealed by the Pesticide Control Board.” This proposed repeal arises out of the proposal of the new regulation, and will accomplish in part the authorized repeal of the current regulation.

Substance: So that there are not conflicting provisions of regulation, this action is necessary. The proposed new regulation, VR 115-04-23, contains regulatory language that is in conflict with language of VR 115-04-03, the present regulation.

Issues: The issue is that of establishing a program for the management of pesticides in Virginia in keeping with the requirements of the Pesticide Control Act of 1989. Such a program should provide a greater measure of protection from the harmful effects of pesticides.

Impact: Because the repeal of the identified provisions of this regulation is intended to occur simultaneously with the adoption of VR 115-04-23, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, there will be no lapse in regulatory authority. The impact on the agency and regulated parties as a result of the adoption of one regulation and partial repeal of the other in this instance, therefore, would be that set forth in the Statement of Basis, Purpose, Substance, Issues, and Impact for VR 115-04-23.

Statutory Authority: § 3.1-249.28 of the Code of Virginia.

Written comments may be submitted until 5 p.m., April 30, 1991.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 403, 1100 Bank St., Richmond, VA 23209, telephone (804) 786-3523.

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† **May 10, 1991 - 10:30 a.m.** – Public Hearing
Sheraton Airport Inn, Salons A and B of Ballroom, 4700 South Laburnum Avenue, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to adopt regulations entitled: **VR 115-04-23. Regulations Governing Pesticide Applicator**

Certification Under Authority of Virginia Pesticide Control Act. Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act set standards of certification for persons specified by statute who use or supervise the use of pesticides in Virginia (including but not limited to farmers using restricted-use pesticides on their own land and persons who apply pesticides commercially, but excluding persons who use nonrestricted-use pesticides in and around their own homes). This regulation will help to assure that these persons subject to the regulation are adequately trained and competent to use pesticides, an important element in any effort to ensure that pesticides are used in a manner consistent with public health, public safety, and the well-being of the environment.

The proposed regulation includes, among other things, standards for training and testing of registered technicians, a classification of pesticide applicator newly created under the Pesticide Control Act, and for private applicators and commercial applicators, classifications of pesticide applicators that exist at present under VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law.

The proposed regulation sets standards of financial responsibility for those who apply pesticides commercially who are not subject to the present business-license regulation. (Licensed pesticide businesses are required to meet certain measures of financial responsibility under a regulation already in effect.)

The proposed regulation requires those subject to its requirements to report pesticide spills.

In part the proposed regulation is intended to supersede four related but different sections of VR 115-04-03.

STATEMENT

Purpose: The purpose of VR 115-04-23, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act (referred to below also as “the proposed regulation”) is to set standards of certification for persons specified by statute who use or supervise the use of pesticides in Virginia (including but not limited to farmers using restricted-use pesticides on their own land and persons who apply pesticides commercially, but excluding persons who use nonrestricted-use pesticides in and around their own homes). The Code of Virginia authorizes the Pesticide Control Board to promulgate regulations “Establishing training, testing and standards for certification of commercial applicators, registered technicians, and private applicators.”

In part the proposed regulation is intended to supersede four related but different sections of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law—specifically § 21, “Categories for commercial

applicators"; § 22, "Standards of certification of commercial applicators"; § 24, "Standards for certification of private applicators"; and § 25, "Standards for application of pesticides classified for restricted use by noncertified applicators." The adoption, therefore, of this proposed regulation will require the repeal of these four provisions of the present regulation, a step authorized by the Virginia Pesticide Control Act.

The proposed regulation sets standards of financial responsibility for those who apply pesticides commercially who are not subject to the present business-license regulation. (Licensed pesticide businesses are required to meet certain measures of financial responsibility under a regulation already in effect.)

The proposed regulation requires those subject to its requirements to report pesticide spills.

Substance: A seminal report, the impetus for legislation creating the Virginia Pesticide Control Act, states that:

...Virginia citizens do not have adequate assurance that pesticides used here are safe for use under Virginia conditions and that they are applied in a way that guarantees public health, safety and the protection of the environment. This is in part due to insufficient training and verification of competence for those who apply large quantities of pesticides. . . . (pp. 4-5, Special Report: Pesticide Management in Virginia (January, 1989), referred to hereinafter as "Report.")

The Report further includes a recommended "Policy for the Management of Pesticides," which contains as one of its provisions a recommendation to establish a Pesticide Control Board. The board, according to the Report, would be responsible for carrying out the policy, the elements of which should be, according to the Report, embodied in law. One recommended element of the policy is "ensuring that individuals who sell, store or apply pesticides commercially are adequately trained and observe safety practices." (pp. 6-7, Report) The Legislature has granted the Pesticide Control Board authority, under the Pesticide Control Act, to take steps by regulation to ensure that this expectation of adequate training and observance of safe practices is met.

The proposed regulation includes, among other things, standards for training and testing of registered technicians, a classification of pesticide applicator newly created under the Pesticide Control Act, and for private applicators and commercial applicators, classifications of pesticide applicators that exist at present under VR 115-04-03.

Issues: At present there are a number of noncertified applicators who apply pesticides commercially; there is nothing in VR 115-04-03 that prohibits this result. Under the proposed regulation, one must be either a registered technician or commercial applicator (or with limited exceptions work under the supervision of a commercial applicator) to apply pesticides commercially. This is one

means of ensuring that those applying the large quantities of pesticides of concern to the authors of the Report have the necessary "training and verification of competence" referred to by the Report.

Another means provided by the proposed regulation is to require that those applying restricted-use pesticides for the production of agricultural commodities on their own property have a higher level of knowledge about the safe use and potential adverse effects of the pesticides they use than is required under VR 115-04-03. Because pesticides are often used in the production of feed, food, and fiber, their safe use by those who produce such feed, food, and fiber is of utmost importance to human health and the environment.

In the absence of the proposed regulation, many of the benefits it would bestow would not be realized.

Impact:

a. Number and types of regulated entities or persons affected:

At present, there are approximately 5,000 commercial applicators. Of these, about 3,250 are commercial applicators for hire. These numbers are expected to increase should the regulation, as proposed, take effect, because many applicators not certified under the present regulation will have to become either commercial applicators or registered technicians.

At present, there are approximately 17,000 private applicators. Private applicators are, for the most part, farmers applying pesticides to their own crops. This number should not be affected by the proposed regulation.

Although there are no figures available to determine how many noncertified applicators there are, many of these, as stated above, will have to become either certified applicators or registered technicians, should the regulation, as proposed, take effect.

b. Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance:

Commercial applicators who are not exempt from paying a fee (federal, state, and local governmental employees are exempt from paying the certification fee) will have to pay a fee of \$35 per year (the penalty for late payment is \$7). These fees are set by VR 115-04-20, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act, a regulation that has been in effect since July 13, 1990.

Registered technicians will have to pay a

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certification fee of \$15 per year (the penalty for late payment is \$3). These fees are set by VR 115-04-20, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act, a regulation that has been in effect since July 13, 1990.

The Pesticide Control Act requires specified minimum insurance to be carried by licensed pesticide businesses. (See § 3.1-249.49 of the Code. See also VR 115-04-22, Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of Virginia Pesticide Control Act.) Some commercial applicators (those not for hire) are exempt from the business-license requirement, but their application of pesticides poses the same potential harm to persons and the environment as does the application of pesticides by other commercial applicators. For this reason, the proposed regulation requires the commercial applicators exempt from having to have a business license to have the same levels of minimum insurance coverage required of licensed businesses—\$200,000 personal injury, and \$200,000 property damage subject to a \$1,000 deductible; or a total combined single limit of \$400,000 minimum, subject to a \$1,000 deductible.

For the prospective commercial applicator or registered technician who wishes to purchase study materials to prepare for any required examination or examinations, he may do so at a minimal cost. Typical cost for a study manual in a given category of pesticide application is \$8 to \$10. These costs are already being borne by commercial applicators pursuant to the present regulation, VR 115-04-03, and so the proposed regulation would impose no additional financial burden upon them in this regard.

c. Projected cost to agency for implementation and enforcement:

No general fund money will be used to implement this regulation. Projected annual costs of implementation and enforcement are \$137,400, half of which is provided to the agency by federal grant, the remaining half coming from special funds.

d. Source of funds:

Special funds, federal grant.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until 5 p.m., April 30, 1991.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of

Agriculture and Consumer Services, P.O. Box 1163, Room 403, 1100 Bank St., Richmond, VA 23209, telephone (804) 786-3523.

STATE ADVISORY BOARD ON AIR POLLUTION

† March 4, 1991 - 9 a.m. -- Open Meeting
James Monroe Building, Conference Room D, First Floor,
14th and Bank Streets, Richmond, Virginia. ☐

The board will hear information briefings on the implications of the Clean Air Act for Virginia and discuss 1991 research assignments on the same topic.

Contact: Kathleen Sands, Staff - Board Liaison, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

ALCOHOLIC BEVERAGE CONTROL BOARD

March 4, 1991 - 9:30 a.m. -- Open Meeting
March 18, 1991 - 9:30 a.m. -- Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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

† March 14, 1991 - 9 a.m. -- Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☐

A meeting to (i) approve minutes from November 29, 1990, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23240, telephone (804) 367-8514.

* * * * *

March 14, 1991 - 10 a.m. -- Public Hearing
Department of Commerce, 3600 West Broad Street, Room 395, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: VR

130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations. The proposed amendment will adjust fees contained in current regulations.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Landscape Architects

February 28, 1991 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes of October 18, 1990, meeting; (ii) review correspondence; and (iii) review applications.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

Board for Land Surveyors

† **March 15, 1991 - 9 a.m. – Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes of November 16, 1990, meeting; (ii) review enforcement files; (iii) review applications; and (iv) review correspondence.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

ASAP POLICY BOARD - VALLEY

† **March 11, 1991 - 8:30 a.m. – Open Meeting**
Augusta County School Board Office, Fishersville, Virginia. ☒

A business meeting to consider (i) court referrals; (ii) financial reports; (iii) director's report; and (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, 2 Holiday Court, Staunton, VA 24401, telephone (703) 886-5616 or 943-4405 (Waynesboro number).

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

February 28, 1991 - 10 a.m. – Public Hearing
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

A public hearing. At 9 a.m. an informal conference hearing will be held to be followed by board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

* * * * *

February 28, 1991 - 10 a.m. – Public Hearing
1601 Rolling Hills Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech Pathology intends to repeal existing regulations and promulgate new regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech Pathology.** The board proposes to repeal existing regulations and promulgate new regulations to establish standards for the practice of audiology and speech pathology in the Commonwealth.

Statutory Authority: §§ 54.1-100 and 54.1-103 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: Meredyth P. Partridge, Executive Director, 1600 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9111.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **March 7, 1991 - 10 a.m. – Open Meeting**
General Assembly Building, Senate Room B, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to conduct general business and review local Chesapeake Bay Preservation Act programs. Tentative agenda will be available at the Chesapeake Bay Local Assistance Department by March 1, 1991.

† **April 4, 1991 - 10 a.m. – Open Meeting**
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to conduct general business and review local Chesapeake Bay Preservation Act programs. Tentative agenda will be available at the Chesapeake Bay Local Assistance Department by March 29, 1991.

Contact: Receptionist, 805 East Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or

Calendar of Events

1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

† **March 14, 1991 - 9 a.m.** – Open Meeting
Koger Executive Center, West End, Blair Building,
Conference Rooms A and B, 8007 Discovery Drive,
Richmond, Virginia. ☒ (Interpreter for deaf provided upon
request)

A meeting to discuss issues, concerns, and programs
that impact child care centers, camps, school age
programs, and preschool/nursery schools. The
contingency snow date is March 22, 1991.

Contact: Peggy Friedenber, Legislative Analyst, Office of
Governmental Affairs, Department of Social Services, 8007
Discovery Dr., Richmond, VA 23229-8699, telephone (804)
662-9217.

BOARD OF COMMERCE

March 18, 1991 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th
Floor, Richmond, Virginia. ☒

A regular quarterly meeting of the board. The board
will assess legislation passed by the General
Assembly's 1991 Session that impacts upon the
Department of Commerce. The board will also discuss
aspects of the Governor's "Project Streamline"
program that will affect the department.

Contact: Alvin D. Whitley, Staff Assistant to Board,
Department of Commerce, 3600 West Broad St., Richmond,
VA 23230, telephone (804) 367-8564 or SCATS 367-8519.

COMPENSATION BOARD

March 14, 1991 - 5 p.m. – Open Meeting
April 25, 1991 - 5 p.m. – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th
Floor, Room 913/913A, Richmond, Virginia. ☒ (Interpreter
for deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box
3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or
(804) 786-3886/TDD ☎

STATE BOARD FOR COMMUNITY COLLEGES

† **March 20, 1991 - Time to be announced** – Open
Meeting
Monroe Building, Board Room, 15th Floor, 101 North 14th
Street, Richmond, Virginia.

Committee meetings.

† **March 21, 1991 - 10 a.m.** – Open Meeting
Monroe Building, Board Room, 15th Floor, 101 North 14th
Street, Richmond, Virginia.

A regular meeting of the board.

Contact: Joy Graham, Monroe Building, 15th Floor, 101 N.
14th St., Richmond, VA 23219, telephone (804) 225-2126.

DEPARTMENT OF CONSERVATION AND RECREATION

Guest Scenic River Advisory Board

† **March 21, 1991 - 7 p.m.** – Open Meeting
† **April 18, 1991 - 7 p.m.** – Open Meeting
Coeburn Town Hall, 403 Second Street, Coeburn, Virginia.

A meeting to review river issues and programs.

Contact: Richard Gibbons, Environmental Programs
Manager, Department of Conservation and Recreation,
Division of Planning and Recreation Resources, 203
Governor St., Suite 326, Richmond, VA 23219, telephone
(804) 786-4132 or 786-2121/TDD ☎

Shenandoah Scenic River Advisory Board

† **March 12, 1991 - 4 p.m.** – Open Meeting
Courthouse in Berryville, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs
Director, Department of Conservation and Recreation,
Division of Planning and Recreation Resources, 203
Governor St., Suite 326, Richmond, VA 22219, telephone
(804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† **March 12, 1991 - 9 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia. ☒

The Regulatory Statutory Review Committee will meet
to consider requests for interpretation of several issues
and to establish policy and procedural guidelines.

Contact: Kelly G. Ragsdale, Assistant Director, 3600 W.
Broad St., Richmond, VA 23219, telephone (804) 367-8557.

† **March 28, 1991 - 10 a.m.** – Open Meeting
Municipal Building, Conference Room, 215 Church Avenue,
4th Floor, Roanoke, Virginia.

The board will meet to conduct a formal hearing: File
Number 89-00558, Board for Contractors v. John T.
Chitwood, III, t/a J T's Remodeling .

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

Complaints Committee

† **March 5, 1991 - 9 a.m.** – Open Meeting
3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting to review and consider complaints filed by consumers against licensed contractors.

Contact: A. R. Wade, Complaints Administrator, 3600 W. Broad St., 5th Floor, Richmond, VA 23219, telephone (804) 367-2394.

Recovery Fund Committee

† **March 26, 1991 - 9 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia. ☐

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting is open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Vickie Brock, Recovery Fund Administrator, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-2394.

BOARD OF CORRECTIONS

March 13, 1991 - 10 a.m. – Open Meeting
6900 Atmore Drive, Board of Corrections Board Room, Richmond, Virginia. ☐

A regular monthly meeting to consider such matters as may be presented.

Contact: Ms. Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

† **March 4, 1991 - 9 a.m.** – Open Meeting
† **March 5, 1991 - 9 a.m.** – Open Meeting
National Assessment Institute, 9881 Mayland Drive, Suite 110, Richmond, Virginia. ☐

Cut score and item development workshop for the practical nail technician examination.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

COUNCIL ON INDIANS

March 27, 1991 - 2 p.m. – Open Meeting
Koger Executive Complex/Nelson Building, Department of Social Services, 2nd Floor Training Conference Room, 1503 Santa Rosa Road, Richmond, Virginia. ☐

A regular meeting of the Virginia Council on Indians to conduct general business and to receive reports from the Council Standing Committees.

Contact: Mary Zoller, Secretary Manager, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9285 or toll-free 1-800-552-7096.

BOARD OF DENTISTRY

March 16, 1991 - 11 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☐

A meeting of the Legislative Committee to discuss any possible legislative changes for 1992 session of the General Assembly. The public may observe the meeting and comments from the public will be accepted.

† **April 24, 1991 - 2 p.m.** – Open Meeting
† **April 25, 1991 - 8:30 a.m.** – Open Meeting
† **April 26, 1991 - 8:30 a.m.** – Open Meeting
† **April 27, 1991 - 1 p.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☐

Committee Meetings on Wednesday:
Regulatory, Executive and Advertising

Committee Reports on Thurs, Fri and Sat:
Regulatory Committee
Advertising Committee
Executive Committee
Legislative Committee
Budget Committee
Exam Committee
Dental Hygiene Endorsement Committee

Regular Board Business on Thurs, Fri and Sat.

Formal Hearings on Thurs, Fri and Sat.

This is a public meeting and the public is invited to observe. Public testimony will be received by the board at this meeting.

† **April 27, 1991 - 10 a.m.** – Public Hearing
Surry Building, 1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☐

The board will conduct its Biennial Informational Public Hearing to receive comments on the current

Calendar of Events

regulations and topics.

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

BOARD OF EDUCATION

February 28, 1991 - 9 a.m. - Open Meeting
March 1, 1991 - 9 a.m. - Open Meeting
Berkeley Hotel, 12th and Cary Streets, Richmond, Virginia.
☒ (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. Public comment will not be received at the meeting.

Contact: Margaret Roberts, Executive Director, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

March 7, 1991 - 5:30 p.m. - Open Meeting
† April 4, 1991 - 5:30 p.m. - Open Meeting
† May 2, 1991 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, Room 502, 10,001 Ironbridge Road, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

March 18, 1991 - 1:30 p.m. - Open Meeting
1 County Complex Court, Prince William, Virginia. ☒

Local Emergency Planning Committee to discharge the provisions of SARA Title III.

Contact: Thomas J. Hajduk, Information Coordinator, 1 County Complex Court, Prince William, VA 22192-9201, telephone (703) 335-6800.

EMERGENCY PLANNING COMMITTEE - RICHMOND

† February 28, 1991 - 10 a.m. - Open Meeting
Phillip Morris Operations Center, 2000 Walmsley

Boulevard, Richmond, Virginia. ☒

A meeting to discuss planning and other recent developments pertaining to the REPC Committee.

Contact: T. E. Price, Captain, CEHMC, 501 N. 9th St., Room 134, Richmond, VA 23219, telephone (804) 780-6660.

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

March 5, 1991 - 1 p.m. - Open Meeting
March 6, 1991 - 1 p.m. - Open Meeting
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia. ☒

A regular meeting to conduct general business.

Contact: Nancy L. Munnikhuisen, 703 East Main St., Richmond, VA 23219, telephone (804) 371-6004.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

March 13, 1991 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

A regularly scheduled board meeting. Public comment will be received during last 30 minutes of meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

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April 15, 1991 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to adopt regulations entitled: **VR 320-01-04. Curriculum for Resident Trainee Program.** The regulation is designed to provide consistency and accountability in the funeral trainee program.

Statutory Authority: § 54.1-2803 of the Code of Virginia.

Written comments may be submitted until April 15, 1991.

Contact: Meredyth Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9941 or SCATS 8-662-7390.

DEPARTMENT OF GENERAL SERVICES

Division of Forensic Science

March 8, 1991 - 10 a.m. - Open Meeting
Monroe Tower Building, 101 North 14th Street, Conference Room C, Richmond, Virginia.

The advisory board will discuss issues, concerns, and programs that impact the Division of Forensic Science and its user agencies.

Contact: Paul B. Ferrara, Ph.D., Director, telephone (804) 786-2281.

HAZARDOUS MATERIALS TRAINING COMMITTEE

† February 26, 1991 - 10 a.m. - Open Meeting
Phillip Morris U.S.A., Operations Center, 2001 Walmsley Boulevard (Ext.), Richmond, Virginia.

The purpose of this meeting will be to discuss curriculum course development, and review existing hazardous materials courses.

Contact: N. Paige Bishop, Henrico County Fire Training Bureau, 10771 Old Washington Highway, Glen Allen, VA 23060, telephone (804) 264-2423.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† April 25, 1991 - 9 a.m. - Public Hearing
James Monroe Building, Conference Room B, 101 North 14th Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: VR 355-40-04. Regulations Governing the Virginia Medical Scholarship Program. The proposed regulations set forth eligibility criteria, award process, terms, conditions and circumstances under which Virginia medical scholarships will be awarded.

STATEMENT

Summary, purpose, need: These regulations incorporate amendments to the Virginia Medical Scholarship Program that were enacted by the 1990 Virginia General Assembly, and that became effective July 1, 1990.

The proposed regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia medical scholarships to medical students; the general terms and conditions applicable to the obligation of each recipient of a medical scholarship to practice medicine in a medically underserved area of Virginia, as identified by the Board of Health by regulation, or to practice medicine in a

designated state facility as defined by regulation; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Medical Scholarship Program. These regulations and the Regulations for Determining Medically Underserved Areas in Virginia supersede and replace Definitions of "Practice of Family Medicine" and "Areas of Need" under the State Medical Scholarship Program which were adopted and became effective December 1, 1979.

Promulgation of these regulations on the effective date of the amendments is of particular importance to carrying out the legislative intent of the amendments, to provide an incentive to medical students to become committed to the practice of medicine in medically of the guidance and financial aid staff of Virginia's medical schools at the earliest possible date for their use in informing incoming 1991-92 students of the benefits available under the Virginia Medical Scholarship Program.

Impact: The cost of implementing the regulations will be absorbed within the agency's 1991-92 appropriation.

Statutory Authority: § 32.1-122.6 B of the Code of Virginia.

Written comments may be submitted until April 26, 1991.

Contact: Raymond O. Perry, Director, Virginia Department of Health, Office of Planning and Regulatory Services, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-6970.

† April 25, 1991 - 1 p.m. - Public Hearing
James Monroe Building, Conference Room B, 101 North 14th Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: VR 355-40-05. Rules and Regulations for the Identification of Medically Underserved Areas in Virginia. The regulations set forth the criteria for identification of areas within the Commonwealth that are in need of additional primary health care services and for the designation of areas so identified as medically underserved areas.

STATEMENT

Summary, purpose, need: These regulations implement legislation enacted by the 1990 Virginia General Assembly that become effective July 1, 1990.

The proposed regulations set forth the criteria for identification of areas within the Commonwealth that are in need of additional primary health care services and for the designation of areas so identified as medically underserved areas. Primary care physicians who have received scholarships under the Virginia Medical

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Scholarship Program are contractually obligated to practice primary care medicine in medically underserved areas of Commonwealth designated by the board.

These regulations are essential to implementation of the Medical Scholarship Program. Immediate promulgation is imperative due to the current need to place primary care physicians who are obligated under the present State Medical Scholarship Program in practice sites in medically underserved areas.

These regulations and the Regulations Governing the Virginia Medical Scholarship Program supersede and replace Definitions of "Practice of Family Medicine" and "Areas of Need" under the State Medical Scholarship Program which were adopted and became effective December 1, 1979.

Further, these regulations provide the designation of medically underserved areas as required for eligibility for state and federal financial assistance to establish primary medical centers, and as practice locations for physicians having a federal physician loan repayment obligation, who desire to locate in Virginia.

Impact: The cost of implementing the regulations will be absorbed within the agency's 1991-92 appropriation.

Statutory Authority: § 32.1-122.5 of the Code of Virginia.

Written comments may be submitted until April 26, 1991.

Contact: Raymond O. Perry, Director, Virginia Department of Health, Office of Planning and Regulatory Services, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-6970.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **March 26, 1991 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION

† **March 6, 1991 - 10 a.m.** – Open Meeting
Monroe Building, Council Conference Room, 101 N. 14th St., Richmond, Virginia. ☒

A general business meeting. Contact Council for more information.

Contact: Barry Dorsey, Deputy Director, 9th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2629.

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

March 15, 1991 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to amend regulations entitled: **VR 390-01-02. Regulations Governing Permits for the Archaeological Excavation of Human Remains.** The purpose of the proposed action is to implement the Virginia Antiquities Act, § 10.1-2305 of the Code of Virginia, governing the issuance of permits for the archaeological excavation of unmarked human burials. This permitting process will affect any persons or entities who conduct any type of archaeological field investigation involving the removal of human remains or associated artifacts from any unmarked human burial. It will also affect any such removal involving archaeological investigation as part of a court-approved removal of a cemetery. This permitting process serves as an alternative to the legal requirement for a court order to remove human burials from unmarked graves and as a supplementary process when the court orders such removal in cases of marked graves and cemeteries. The proposed regulations include technical criteria, and administrative procedures governing the issuance of said permits including such issues as: professional qualifications of applicant, research goals and methodology, interim curation, and final disposition and public comment.

Statutory Authority: § 10.1-2300 et seq. of the Code of Virginia.

Contact: Dr. M. Catherine Slusser, State Archaeologist, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

March 5, 1991 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

COUNCIL ON INFORMATION MANAGEMENT

† **March 22, 1991 - 9 a.m.** – Open Meeting
Washington Building, 9th Floor Conference Room, 1100
Bank Street, Richmond, Virginia. ☒

A regular business meeting to consider adoption of
ITRM Guideline on the Telecommunications Wiring of
State Buildings.

Contact: Linda Hening, Administrative Assistant,
Washington Bldg., Suite 901, 1100 Bank St., Richmond, VA
23219, telephone (804) 225-3622.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

March 15, 1991 - 8:30 a.m. – Open Meeting
April 19, 1991 - 8:30 a.m. – Open Meeting
Office of the Coordinator, Interdepartmental Regulation,
Suite 208, 1603 Santa Rosa Road, Tyler Building,
Richmond, Virginia. ☒

Regularly scheduled meetings to consider such
administrative and policy issues as may be presented
to the committee. A period for public comment is
provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental
Regulation, Office of the Coordinator, 8007 Discovery Dr.,
Richmond, VA 23229-8699, telephone (804) 662-7124.

LIBRARY BOARD

† **March 13, 1991 - 10 a.m.** – Open Meeting
Multi-purpose Room, Davis Building, Eastern State Hospital,
Williamsburg, Virginia. ☒

A meeting to discuss administrative matters of the
Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian,
Virginia State Library and Archives, 11th Street at Capitol
Square, Richmond, VA 23219, telephone (804) 786-2332.

COMMISSION ON LOCAL GOVERNMENT

† **March 11, 1991 - 10 a.m.** – Open Meeting
State Capitol, House Room 2, Richmond, Virginia.

A regular meeting to consider such matters as may be
presented.

Persons desiring to participate in the commission's
regular meeting and requiring special accommodations
or interpreter services should contact the Commission's

office by March 4, 1991.

Contact: Barbara Bingham, Administrative Assistant, 702
Eighth Street Office Bldg., Richmond, VA 23219, telephone
(804) 786-6508 or (804) 786-1860/TDD ☒

LOCAL GOVERNMENT ADVISORY COUNCIL

† **March 11, 1991 - 1 p.m.** – Open Meeting
General Assembly Building, Speaker's Conference Room,
Sixth Floor, Richmond, Virginia.

A regular meeting.

Contact: Robert H. Kirby, Secretary, Room 702, Eighth
Street Office Bldg., Richmond, VA 23219, telephone (804)
786-6508.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

NOTE: CHANGE IN MEETING DATE

March 25, 1991 - 10 a.m. – Open Meeting
State Lottery Department, Conference Room, 2201 West
Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will
be conducted according to items listed on agenda
which has not yet been determined. Two periods for
public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State
Lottery Department, 2201 W. Broad St., Richmond, VA
23220, telephone (804) 367-9433.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

March 15, 1991 – Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Board of Medical
Assistance Services intends to amend regulations
entitled: **VR 460-02-2.2100, VR 460-02-2.6100, VR
460-03-2.6105, and VR 460-03-2.6112. Restoration of
Income and Resource Methodologies.** This action
proposes to restore Medicaid's income and resource
methodologies which were overturned by court order.

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

Written comments may be submitted until 4:30 p.m.,
March 15, 1991, to Ann E. Cook, Eligibility and Regulatory
Consultant, Division of Policy and Research, DMAS, 600 E.
Broad St., Suite 1300, Richmond, VA 23219, telephone (804)
786-7933.

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Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-9733.

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† **April 26, 1991** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-03-4.1921. Methods and Standards for Other Types of Services: Obstetric and Pediatric Maximum Payments.** The purpose of this proposal is to promulgate permanent regulations regarding specific obstetric and pediatric maximum payment amounts by DMAS which became effective July 1, 1990.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

Section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) mandated that states include the amounts of payments for certain obstetric and pediatric procedures in their state plans. Each state establishes its own payment levels for Medicaid services; however, Medicaid regulations (42 CFR 447.204) provide that payments must be sufficient to enlist enough providers so that covered services will be available to Medicaid beneficiaries to at least the extent that such services are available to the general population.

Summary and analysis: Attachment 4.19 B of the Plan contains reimbursement methodologies for all covered services except for inpatient hospital and long-term care, which are covered in other Plan attachments. This amendment would add a new Supplement 1 to Attachment 4.19 B, providing obstetric and pediatric payment rates, in conformance with the OBRA 89 requirement.

The payment rates listed in this amendment are the same as those listed in the emergency regulation which this proposed regulation would supersede, and were approved by the Health Care Financing Administration on December 10, 1990. The only changes (the addition of several procedure codes) in this proposed regulation over the current emergency regulation were required by HCFA

during the State Plan amendment approval process.

Impact: This amendment has no fiscal impact because it incorporates existing payment ranges for covered procedures. It places additional information on current policy in the State Plan.

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

Written comments may be submitted until April 26, 1991, to Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, Virginia.

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

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† **April 26, 1991** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.5. Home and Community Based Services for Technology Dependent Individuals.** The purpose of this proposal is to promulgate permanent regulations regarding Medicaid services for technology-assisted individuals, to supersede the temporary emergency regulation which became effective on June 22, 1990.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

Section 1915(c) of the Social Security Act permits states to provide specific Medicaid services to specific Medicaid-eligible individuals without having to provide such services to entire Medicaid-eligible population, by obtaining a waiver approved by the U.S. Secretary of Health and Human Services.

Summary and analysis: Since December 1988, DMAS has provided home-based services under a Social Security Act waiver to individuals younger than 21 who are ventilator dependent and whose care would otherwise require prolonged institutionalization. Under this waiver, DMAS provided in-home nursing care, respite care, and the purchase or rental of apnea monitors to

ventilator-dependent children. In addition, this waiver allowed only certain hospital-based entities to contract with DMAS for provision of health care coordination, thereby limiting statewide service availability.

The 1990 General Assembly directed that DMAS seek expansion of the waiver to include persons dependent upon other types of technology. In developing this amended waiver, DMAS consulted with health care professionals in acute care settings rendering care to technology-assisted individuals, other state agencies experienced in providing home-based waiver services and health care professionals in the health care coordination field. On April 26, 1990, acting for the Secretary of Health and Human Services, the Health Care Financing Administration (HCFA) approved the new waiver request. This waiver not only broadened the population served to include individuals dependent upon ventilators and other medical technology, but it also expanded the definition of entities which can provide health care coordination, and added nutritional supplements (nonlegend drugs) to the list of medical supplies which can be provided to persons receiving services under the waiver. DMAS promulgated the provisions of the waiver in an emergency regulation which became effective on June 22, 1990.

This proposed regulation contains two technical corrections not present in the emergency regulation it would replace. One includes minor changes in eligibility requirements directed by HCFA, and the other would allow DMAS to contract with home health agencies which are either licensed or certified to provide private duty nursing or respite care.

Impact: While the emergency regulation enabled DMAS to serve an additional nine individuals in calendar year 1990, the proposed regulation should allow an additional 32 persons to be served in 1991.

Expenditures on community-based and other medical services these individuals will receive under the proposed regulation will be offset by savings in acute care and institutional services already included in DMAS' service budget for this period. The net impact is expected to be budget neutral.

DMAS estimates that as many as five additional providers will meet its requirement for health care coordination and may wish to contract with DMAS. Health care coordination is reimbursed as an administrative prescreening and utilization review function. Moneys have been appropriated in the administrative budget for the additional number of individuals for whom health care coordination would be required.

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

Written comments may be submitted until April 26, 1991, to Chris Pruett, Analyst, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, Virginia.

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

BOARD OF MEDICINE

Advisory Board on Physical Therapy

† **May 3, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The board will review and discuss regulations, bylaws, procedural manuals, receive reports, and other items which may come before the advisory board. Public comment will not be received.

Chiropractic Examination Committee

† **April 18, 1991 - 1:30 a.m.** – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The committee will meet in executive and closed session to develop test items for the chiropractic examination. Public comments will not be received.

Credentials Committee

† **April 6, 1991 - 8 a.m.** – Open Meeting
Department of Health Professions, Board Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to conduct general business, interview and review medical credentials of applicants for licensure in Virginia, in open and executive session, and discuss any other items which may come before the committee. Public comments will not be received.

Executive Committee

† **April 5, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The committee will meet in open session to review closed cases, cases/files requiring administrative action, and consider any other items which may come before the committee. Public comments will not be received.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Informal Conference Committee

March 6, 1991 - 9 a.m. – Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, N.W.,

Calendar of Events

Roanoke, Virginia. ☒

† **March 1, 1991 - 9 a.m.** – Open Meeting
March 12, 1991 - 9 a.m. – Open Meeting
Sheraton-Fredericksburg Resort and Conference Center,
I-95 and Route 3, Fredericksburg, Virginia. ☒

March 15, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, Board Room 1, 1601
Rolling Hills Drive, Richmond, Virginia. ☒

† **March 22, 1991 - 9 a.m.** – Open Meeting
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg
Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education

March 7, 1991 - 9 a.m. – Open Meeting
March 8, 1991 - 9 a.m. – Open Meeting
Richmond Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ☒

Fourteenth Annual Symposium on Mental Health and the Law. An annual symposium addressing issues related to mental health and the law. Approximately nine hours in Category 1 CME, 9 CEU and 9 CLE credits applied for.

Contact: Carolyn Engelhard, Administrator, Institute of Law, Psychiatry and Public Policy, Box 100, Blue Ridge Hospital, Charlottesville, VA 22901, telephone (804) 924-5435.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

February 27, 1991 - 10 a.m. – Open Meeting
† **March 27, 1991 - 10 a.m.** – Open Meeting
James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be

published one week prior to the meeting and may be obtained by calling Jane Helfrich.

Tuesday: Informal session - 6 p.m.

Wednesday: Committee meetings 8:45 a.m. and regular session 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIGRANT AND SEASONAL FARMWORKERS BOARD

† **March 5, 1991 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 1, Richmond, Virginia. ☒

A regular meeting of the board.

Contact: Marilyn Mandel, Director, Office of Planning and Policy, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23229-5005, telephone (804) 786-2385.

DEPARTMENT OF MINES, MINERALS AND ENERGY

March 26, 1991 - 10 a.m. – Public Hearing
Department of Social Services, S.W. Virginia Regional office, 190 Patton Street, Abingdon, Virginia.

March 27, 1991 - 1 p.m. – Public Hearing
General Assembly Building, House Room D, Richmond, Virginia.

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 repeal regulations entitled: **VR 480-05-22. Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing** and adopt regulations entitled: **VR 480-05-22.1. Gas and Oil Regulations**. The existing regulation governing development, operation, and reclamation of gas and oil operations in Virginia will be repealed concurrently with promulgation of the VR 480-05-22.1 Gas and Oil Regulations which will govern development, operations and reclamation of gas, oil or geophysical operations in Virginia.

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: B. Thomas Fuller, Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, P.O. Box 1416, 230 Charwood Dr., Abingdon, VA 24210, telephone (703) 628-8115, SCATS 676-5501 or

toll-free 1-800-552-3831.

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March 26, 1991 - 10 a.m. – Public Hearing
Department of Social Services, S.W. Virginia Regional
Office, 190 Patton Street, Abingdon, Virginia.

March 27, 1991 - 1 p.m. – Public Hearing
General Assembly Building, House Room D, Richmond,
Virginia.

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 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells.** The regulation provides requirement for safe operation of vertical mine ventilation holes and for safe mining near gas and oil wells.

Statutory Authority: §§ 45.1-1.3(4), 45.1-92.1 and 45.1-104 of the Code of Virginia.

Written comments may be submitted until 5 p.m., March 29, 1991.

Contact: Bill Edwards, Policy Analyst, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330.

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† April 29, 1991 - 10 a.m. – Public Hearing
Virginia Division of Mined Land Reclamation, Upstairs
Conference Room, 622 Powell Avenue, Big Stone Gap,
Virginia.

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 amendments define ownership and control of coal mining operations for the purpose of tracking outstanding regulatory violations and blocking permitted activity until such violations are abated.

STATEMENT

Basis: The amendments are being promulgated pursuant to §§ 45.1-1.3(4) and 45.1-230 of the Code of Virginia.

Purpose: The purpose of these amendments is to maintain consistency between the department's Coal Surface Mining Reclamation Regulations and the corresponding federal rules promulgated under the authority of the U.S. Surface Mining Control and Reclamation Act of 1977. People who own or control mining operations that currently are in violation of state or federal laws and regulations are prohibited from receiving additional permits in any location until the violations are corrected. These

amendments specify the people considered to own or control mining operations, and detail the requirements for reporting violations and ownership and control data. Procedures for the identification and rescission of improperly issued permits are also included.

Substance: The substance of the amendments is to require more data from mine operators and corporate officers with coal mining permits or permit applications in Virginia regarding their interests in various coal mining operations, and regarding any outstanding violations attributed to those operations. The amendments also enable the department to block further permitting activity by operators and owners who have not abated these outstanding violations. Maintaining consistency with corresponding federal regulations allows the department to retain the authority to administer the requirements of the federal surface mining act in Virginia.

Issues: The issues raised in connection with these amendments would likely concern the relationships that constitute ownership and control of mining operations, and the process available to people to demonstrate that they do not in fact have the authority directly or indirectly to determine the manner in which a mining operation is conducted. Issues relating to the range of violations specified for the compliance review may be raised. The criteria used to determine whether the department has issued a permit improperly, and the steps that will be taken to bring the permittee into compliance, or to rescind the permit, also may be of concern to mine operators. There may be concern over expanded application requirements and how they apply to all people who own or control the permit applicant.

Impact: The amendments establish the nature of the relationships that will constitute ownership and control of coal mining operations. They focus on relationships that allow one person to compel action by another person, giving that person the authority, directly or indirectly, to determine the manner in which a mining operation is conducted. The department participates in the Applicant Violatory System (AVS), a nationwide database of information about mine operators, people who own or control mining operations, and uncorrected violations linked to them. The AVS is operated by the U.S. Office of Surface Mining.

Information obtained through the proposed added or changed definitions of ownership and control and operator, along with the expanded reporting of violations and ownership and control data, will be made a part of the AVS. The system will be examined before an applicant is approved, to ensure that people controlling sites currently in violation are not allowed to receive additional permits.

On October 1, 1990, there were 1,291 permits approved for coal mining operations. These changes are likely to increase the cost for mine operators of compiling the required information on an expanded group of people identified as owners or controllers of mines. Except for

Calendar of Events

these additional information requirements, the amendments should have no additional impacts on people who conduct mining operations, provided they are in compliance with the applicable laws and regulations.

Statutory Authority: §§ 45.1-1.3 and 45.1-230 of the Code of Virginia.

Written comments may be submitted until 5 p.m., April 29, 1991.

Contact: Bill Edwards, Policy Analyst, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330.

BOARD OF NURSING HOME ADMINISTRATORS

† **March 6, 1991 - 1 p.m.** – Open Meeting
1601 Rolling Hills Dr., Conference Room 2, Richmond, Virginia. ☒

Informal conferences.

March 7, 1991 - 8:30 a.m. – Open Meeting
1601 Rolling Hills Dr., Conference Room 1, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

BOARD OF OPTOMETRY

† **March 13, 1991 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Dr., Conference Room 3, Richmond, Virginia.

Informal conferences.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9910.

VIRGINIA OUTDOORS FOUNDATION

† **March 4, 1991 - 10:30 a.m.** – Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ☒

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-5539.

BOARD OF PROFESSIONAL COUNSELORS

† **March 18, 1991 - 9 a.m.** – Open Meeting
9504 A Lee Highway, Fairfax, Virginia.

An examination committee meeting. No public comments will be received.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Department of Health Professions, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

March 18, 1991 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists Regulations.** The proposed action will amend fees to assure the board's compliance with § 54.1-113 of the Code of Virginia.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 18, 1991.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

BOARD OF PSYCHOLOGY

Examination Committee

† **March 1, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting of the Examination Committee. Public comment will not be received.

Contact: Evelyn Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229-5005, telephone (804) 662-9913 or (804) 662-7197/TDD ☎

VIRGINIA RACING COMMISSION

† **April 17, 1991 - 9:30 a.m.** – Public Hearing
VRSR Building, 1204 East Main Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-03-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.** This proposed regulation establishes the duties,

qualifications and responsibilities of participants in horse racing.

STATEMENT

Statement of purpose: This regulation, VR 662-03-02, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants, sets forth the qualifications, duties and responsibilities of participants who will be participating in horse race meetings licensed by the Virginia Racing Commission. It is essential that high standards of conduct be established for participants so that horse racing, with pari-mutuel wagering, will be conducted in the Commonwealth of Virginia free from corrupt, unprincipled or incompetent practices.

Estimated impact:

1. Entities affected:

Those persons desiring to participate in horse racing, i.e., owners, trainers, jockeys, etc., will be directly affected. They will have to apply for permits prior to being permitted to participate in race meetings licensed by the commission. Further, the holders of permits will be required to conduct their participation in horse racing according to the regulations of the commission. However, it should be noted that the commission has closely followed the uniform regulations of neighboring jurisdictions in the development of this regulation.

In the March 12, 1990, issue of The Virginia Register, the commission caused to be published a Notice of Intended Regulatory Action requesting input from interested parties in the development of the regulation pertaining to permit holders. The commission allocated time during its regular monthly commission meetings for the drafting of the regulation pertaining to participants. During these meetings, counsel from the Attorney General's Office was present and commented upon the various drafts. Copies of the drafts were made available to all requesting them, and copies were distributed to the commission's advisory group, which includes representatives of the Jockeys' Guild, the Virginia Thoroughbred Association, and the Virginia Steeplechase Association. Also, Mr. Richard Hanson, a steward for The Jockey Club and participant in RCI's uniform rules project, reviewed this regulation and commented upon it.

This regulation represents a consensus of the commissioners and the parties who participated in the drafting process. This regulation specifies the various categories in which permit holders may participate in race meetings. In addition, this regulation sets forth the duties, responsibilities and qualifications for each category. The regulation is accompanied by a proposed fee schedule, application form and other forms as required by the regulation.

2. Fiscal impact:

Costs to affected entities. The applicants for permits to participate in race meetings by the commission will have to complete an application form, have their fingerprints taken and pay an application fee. The application has been designed to incorporate the major features of RCI's Multi-State Racing License Information Form. The application form is a one-sheet, two-sided form. The applicant will be fingerprinted by commission personnel and the fingerprints will be submitted to the Virginia State Police and Federal Bureau of Investigation. The applicant will have to submit a separate fee to cover the cost of being fingerprinted; however, the applicant will be usually fingerprinted only once very five years. The fee schedule is comparable with those of neighboring jurisdictions.

Cost to the commission. There will be some cost to the commission in administering this regulation. The cost of administering the application process will be partially recovered through the application fee. The primary cost to the commission will be in the employing and training of clerical personnel to process the applications, the printing of application forms, and related office supply and furniture costs. In previous regulations, it was specified that the licensee would provide office space for the commission at the horse racing facility, and this is an accepted industry practice.

Source of commission funds. The cost of initially administering this regulation will be drawn from a loan on a treasury note. It is anticipated that the commission's cost in administering this regulation will be covered by the Commonwealth's share of the retainage from pari-mutuel wagering.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until April 26, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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† April 17, 1991 - 9:30 a.m. - Public Hearing VSRS Building, 1204 East Main Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: VR 662-04-03, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races. This proposed regulation establishes procedures and conditions under which claiming races will be conducted at horse racing facilities licensed by the commission.

Calendar of Events

STATEMENT

Statement of purpose: This regulation, VR 662-04-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Claiming Races, sets forth the procedures and conditions under which claiming races will be conducted at horse racing facilities licensed by the Virginia Racing Commission. It is essential that the procedures and conditions under which claiming races will be conducted be clearly delineated as well as the responsibilities of the participants.

Estimated impact:

I. Entities affected:

Those persons desiring to participate in horse racing, i.e., owners, trainers, authorized agents, bloodstock agents, etc., will be directly affected. These holders of permits will have to conform to the procedures spelled out in this regulation when either entering a racehorse in a claiming race or seeking to purchase a racehorse out of a claiming race. However, it should be noted that the commission has closely followed the uniform regulations of Racing Commissioners International (RCI) and those of neighboring jurisdictions in the development of this regulation.

In the July 30, 1990, issue of The Virginia Register, the commission caused to be published a Notice of Intended Regulatory Action requesting input from interested parties in the development of the regulation pertaining to claiming races. The commission allocated time during its regular monthly commission meetings for the drafting of the regulation pertaining to claiming races. During these meetings, counsel from the Attorney General's Office was present and commented upon the various drafts. Copies of the drafts were made available to all requesting them, and copies were distributed to the commission's advisory group which includes industry interest groups, such as the Virginia Thoroughbred Association, the Virginia Harness Horse Association and the Virginia Steeplechase Association. Also, Mr. Richard Hanson, a steward for The Jockey Club and participant in RCI's uniform rules project, reviewed this regulation and commented upon it.

This regulation represents a consensus of the commissioners and the parties who participated in the drafting process. This regulation specifies the procedures to be followed when a participant enters and races a racehorse in a claiming race, and the conditions and circumstances under which a participant may purchase a racehorse out of a claiming race. The regulation is accompanied by a claiming certificate which will be utilized in administering the regulation.

2. Fiscal impact:

Cost to affected entities. Before a person can claim a racehorse at a race meeting licensed by the commission, the person must have been issued a permit or have been

issued a claiming certificate. The applicant for a permit or certificate will have to submit an application for a permit as an owner, pay the applicable fee, and have their fingerprints taken. There will be a separate fee assessed for processing fingerprints. In addition, the licensee will have provide a locked claims box, a time clock to stamp the envelopes containing the claim slips, and designate a claims clerk to administer the procedure. However, it should be noted that licensees in almost all other states are required to provide personnel and equipment to administer claiming races.

Cost to the commission. There will be some cost to the commission in administering this regulation. The cost of administering claiming races will be partially recovered through the application fee. However, the primary cost to the commission will be in the employing and training of clerical personnel to process the applications for claiming certificates, printing the forms, and related office supply and furniture costs. In previous regulations, it was specified that the license would provide office space for the commission at the horse racing facility, and this is an accepted industry standard.

Source of commission funds. The cost of initially administering this regulation will be drawn from a loan on a treasury note. It is anticipated that the commission's cost in administering this regulation will be covered by the Commonwealth's share of the retainage from pari-mutuel wagering.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until April 26, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

REAL ESTATE APPRAISER BOARD

February 28, 1991 - 10 a.m. - Open Meeting
Department of Commerce, 5th Floor, 3600 West Broad Street, Richmond, Virginia.

The Education Committee will meet to report on educational standards for licensure.

Contact: Demetra Y. Kontos, Assistant Director, Appraiser Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 22230, telephone (804) 367-2175 or (804) 367-9753/TDD ☎

THE REFORESTATION OF TIMBERLANDS BOARD

March 14, 1991 - 10 a.m. - Open Meeting
Old Norwood Plantation, 3.6 miles West of Wingina on Route 647 in Nelson County, Virginia.

Semiannual meeting of the board to review accomplishments and budget.

Contact: Phil Grimm, Assistant Chief, Forest Management, Department of Forestry, Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or SCATS 487-1230.

BOARD OF REHABILITATIVE SERVICES

February 28, 1991 - 10 a.m. – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will receive department reports, consider regulatory matters and conduct the regular business of the board.

Finance Committee

February 28, 1991 - 9 a.m. – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review monthly financial reports and budgetary projections.

Legislation and Evaluation Committee

February 28, 1991 - 9 a.m. – Open Meeting

Legislative update.

Program Committee

February 28, 1991 - 9 a.m. – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to consider specific learning disability (SLD) programs and economics of disability/predictive case service model.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019 TDD and Voice or (804) 367-0280/TDD ☎

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† **April 26, 1991 - 10 a.m. – Public Hearing**
Tyler Building, Suite 220, Conference Room, 8007 Discovery Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-08-01. Virginia Energy Assistance Program.** The proposed amendment will change the Cooling Assistance start date to July 1, 1991.

STATEMENT

Subject: The proposed amendment to the following regulation:

VR 615-08-01 Virginia Energy Assistance Program

This amendment is being proposed for a 60-day comment period.

Substance: The amendment to the program is as follows:

Application period would begin July 1 in the Cooling Assistance Component.

Basis: Section 63.1-25 provides the statutory basis for the promulgation of regulations relative to the Energy Assistance Program.

Purpose: The proposed amendment would affect the Cooling Assistance Component. The amendment will provide for a later start date and ensure the assistance provided meets cooling needs.

Estimated impact: The proposed amendment will affect applicants who attempt to apply for assistance between June 15 and July 1. There are no projected costs to the public, recipients or vendors of the component. There are no projected costs to local departments of social services.

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

Written comments may be submitted until April 26, 1991, to Charlene H. Chapman, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia.

Contact: Peggy Friedenbergh, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

† **March 21, 1991 - 9 a.m. – Open Meeting**
Comfort Inn, Corporate Gateway, 8710 Midlothian Turnpike, Richmond, Virginia.

Bimonthly business meeting and tour of state regulated dam sites in Chesterfield County.

Contact: Donald L. Wells, Deputy Director, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2064.

VIRGINIA'S TRANSITION TASK FORCE

March 14, 1991 - 10 a.m. – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter of deaf

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provided if requested)

Representatives of 13 state agencies and the community will meet to develop strategies to develop and implement transition services for youth and young adults with disabilities throughout the Commonwealth. Business meeting begins at 10 a.m. Public comment (verbal or written) on transition efforts, issues, barriers, service gaps, best practices, policies, etc., is encouraged. Public comment time 11:30 a.m. to 12:30 p.m. Written comments will be read and may be sent to Mr. Tom Bass, Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, VA 23230.

Contact: Sharon deFur, Coordinator/Transition Services, Virginia Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2880 or (804) 225-2886/TDD

COMMONWEALTH TRANSPORTATION BOARD

† **March 20, 1991 - 2 p.m. - Open Meeting**
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A work session of the board and staff.

† **March 21, 1991 - 10 a.m. - Open Meeting**
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

TREASURY BOARD

CHANGE IN MEETING DATE

† **March 13, 1991 - 9 a.m. - Open Meeting**
† **April 17, 1991 - 9 a.m. - Open Meeting**
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting of the board.

Contact: Laura Wagner-Lockwood, Senior Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4931.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATIONAL

February 28, 1991 - 10 a.m. - Open Meeting
Berkeley Hotel (Tentative), Richmond, Virginia.

Tentative meeting with the Virginia Board of Education.

Contact: George S. Orr, Jr., Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA WASTE MANAGEMENT BOARD

March 7, 1991 - 10 a.m. - Open Meeting
General Assembly Building, House Room C, Richmond, Virginia. ☒

A general business meeting.

Contact: Loraine Williams, Secretary, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2667, toll-free 1-800-552-2075 or (804) 233-3753/TDD ☒

April 15, 1991 - 10 a.m. - Open Meeting
Monroe Building, 11th Floor, 101 North 14th Street, Richmond, Virginia. ☒

An informational meeting will be held for Amendment 9 to the Regulations Governing the Transportation of Hazardous Materials. The proposed amendment will incorporate by reference changes that were made by U.S. DOT to Title 49 Code of Federal Regulations from July 1, 1989, to June 30, 1990. Therefore, this amendment (with the possible exception of the requirements relating to mandatory drug testing program) is not expected to have a significant impact on the regulated community.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Fl., Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2667 or toll-free 1-800-552-2075.

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April 15, 1991 - 11 a.m. - Public Hearing
Monroe Building, 101 North 14th Street, 11th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.** The purpose

of the amendments is to incorporate by reference changes that were made by U.S. DOT to Title 49 Code of Federal Regulations from July 1, 1989 to June 30, 1990.

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

Written comments may be submitted until April 12, 1991, to William E. Gilley, P.E., Director of Regulation, Department of Waste Management, 101 N. 14th St., 11th Floor, Monroe Bldg., Richmond, Va.

Contact: C. Ronald Smith, Hazardous Waste Enf., Chief, 11th Fl., Monroe, Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2667 or toll-free 1-800-552-2075.

STATE WATER CONTROL BOARD

† March 12, 1991 - 7 p.m. - Public Hearing
Blackstone Town Council Chambers, 100 West Elm Street, Municipal Building, Blackstone, Virginia. ☒

A public hearing to receive comments on the proposed reissuance of Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0025194 for the Fort Pickett Waste Water Treatment Plan (WWTP), Building 234, Fort Pickett, Blackstone, Virginia 23824. The purpose of the hearing is to receive comments on the proposed permit, the reissuance or denial of the permit, and the effect of the discharge on water quality or beneficial uses of state waters.

Contact: Lori A. Freeman, Hearing Reporter, Office of Policy Analysis, State Water Control Board, 2111 N. Hamilton St., P.O. Box 11143, Richmond, VA 23230, telephone (804) 376-6815.

March 25, 1991 - 9 a.m. - Open Meeting
March 26, 1991 - 9 a.m. - Open Meeting
General Assembly Building, Senate Room B, 9th and Broad Streets, Richmond, Virginia.

A regular quarterly meeting.

Contact: Doneva A. Dalton, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, 2111 N. Hamilton St., Richmond, VA 23230, telephone (804) 367-6829.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

† February 26, 1991 - 10 a.m. - Open Meeting
General Assembly Building, House Room C, Richmond, Virginia.

A regular Commission meeting.

Contact: William T. McCollum, Executive Director,

Commission on Virginia Alcohol Safety Action Program, Richmond, VA 23219, telephone (804) 786-5895.

VIRGINIA WINEGROWERS ADVISORY BOARD

† April 8, 1991 - 10 a.m. - Open Meeting
Oakencroft Vineyard and Winery, Charlottesville Virginia.

The board will hear reports from committee chairs and project monitors, and review old and new business. The board will also hear and vote on new project proposals for the 91-92 Fiscal Year.

Contact: Annette C. Ringwood, Wine Marketing Specialist, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685

BOARD OF YOUTH AND FAMILY SERVICES

March 14, 1991 - 9 a.m. - Open Meeting
700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, Virginia.

A general business meeting.

Contact: Paul E. Steiner, Regulatory Coordinator, 700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, VA 23219, telephone (804) 371-0700.

LEGISLATIVE

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† March 7, 1991 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, Richmond, Virginia.

A work session.

Contact: Katherine L. Imhoff, Executive Director, Commission on Population Growth and Development, Room 519, General Assembly Building, Richmond, VA 23219, telephone (804) 371-4949 or 786-7303.

CHRONOLOGICAL LIST

OPEN MEETINGS

February 26
† Hazardous Materials Training Committee
† Virginia Alcohol Safety Action Program, Commission on the

February 27

Calendar of Events

Mental Health, Mental Retardation and Substance Abuse Services Board, State

February 28

Audiology and Speech Pathology, Board of Education, Board of
† Emergency Planning Committee - Richmond
Landscape Architects, Board for Rehabilitative Services, Board of
- Finance Committee
- Legislation and Evaluation Committee
- Program Committee
Vocational Education, Virginia Council on

March 1

† Aging, Department for the Education, Board of
† Medicine, Board of
- Informal Conference Committee
† Psychology, Board of
- Examination Committee

March 4

† Accountancy, Board for
† Air Pollution, State Advisory Board on Alcoholic Beverage Control Board
† Cosmetology, Board for
† Outdoors Foundation, Virginia

March 5

† Contractors, Board for
- Complaints Committee
† Cosmetology, Board for
Employment Commission, Virginia
- State Advisory Board
Hopewell Industrial Safety Council
† Migrant and Seasonal Farmworks Board

March 6

Employment Commission, Virginia
- State Advisory Board
General Services, Department of
- Division of Forensic Science
† Higher Education, State Council of
Medicine, Board of
† Nursing Home Administrators, Board of

March 7

† Chesapeake Bay Local Assistance Board
† Population Growth and Development, Commission on
Local Emergency Planning Committee, Chesterfield County
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education
Nursing Home Administrators, Board of
Waste Management Board, Virginia

March 8

General Services, Department of
- Division of Forensic Science
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education

March 11

† ASAP Policy Board, Valley
† Local Government Advisory Council
† Local Government, Commission on

March 12

† Contractors, Board for
Medicine, Board of
† Shenandoah Scenic River Advisory Board
† Water Control Board, State

March 13

Corrections, Board of
Funeral Directors and Embalmers, Board of
† Library Board
† Optometry, Board of
† Treasury Board

March 14

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Child Day-Care Council
Compensation Board
Reforestation of Timberlands Board
Transition Task Force, Virginia
Youth and Family Services, Board of

March 15

Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee
† Land Surveyors, Board for
Medicine, Board of

March 16

Dentistry, Board of

March 18

Alcoholic Beverage Control Board
Commerce, Board of
Local Emergency Planning Committee, County of Prince William, City of Manassas, and City of Manassas Park
† Professional Counselors, Board of

March 20

† Community Colleges, State Board for
† Transportation Board, Commonwealth

March 21

† Community Colleges, State Board for

- † Conservation and Recreation, Department of
- Guest Scenic River Advisory Board
† Soil and Water Conservation Board, Virginia
† Transportation Board, Commonwealth
- March 22**
† Information Management, Council on
† Medicine, Board of
- Informal Conference Committee
- March 25**
Lottery Board, State
Water Control Board, State
- March 26**
† Contractors, Board for
- Recovery Fund Committee
† Health Services Cost Review Council
Water Control Board, State
- March 27**
Council on Indians
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
- March 28**
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory
Council
† Contractors, Board for
- April 4**
† Chesapeake Bay Local Assistance Board
† Emergency Planning Committee, Local - Chesterfield
County
- April 5**
† Medicine, Board of
- Executive Committee
- April 6**
† Medicine, Board of
- Credentials Committee
- April 8**
† Winegrowers Advisory Board, Virginia
- April 15**
Waste Management, Department of
- April 17**
† Treasury Board
- April 18**
† Conservation and Recreation, Department of
- Guest Scenic River Advisory Board
† Medicine, Board of
- Chiropractic Examination Committee
- April 19**
Interdepartmental Regulation of Residential Facilities
- for Children
- Coordinating Committee
- April 24**
† Dentistry, Board of
- April 25**
Compensation Board
† Dentistry, Board of
- April 26**
† Dentistry, Board of
- April 27**
† Dentistry, Board of
- May 2**
† Emergency Planning Committee, Local - Chesterfield
County
- May 3**
† Medicine, Board of
- Advisory Board on Physical Therapy

PUBLIC HEARINGS

- February 28**
Audiology and Speech Pathology, Board of
- March 11**
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- March 14**
Commerce, Department of
- March 26**
Mines, Minerals and Energy, Department of
- March 27**
Mines, Minerals and Energy, Department of
- April 15**
Waste Management, Department of
- April 17**
† Racing Commission, Virginia
- April 25**
† Health, Department of
- April 26**
† Social Services, Department of
- April 29**
† Mines, Minerals and Energy, Department of
- May 10**

Calendar of Events

† Agriculture and Consumer Services, Department of
- Pesticide Control Board