

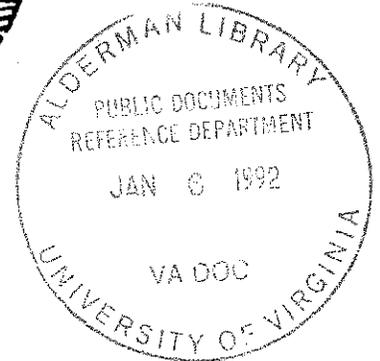
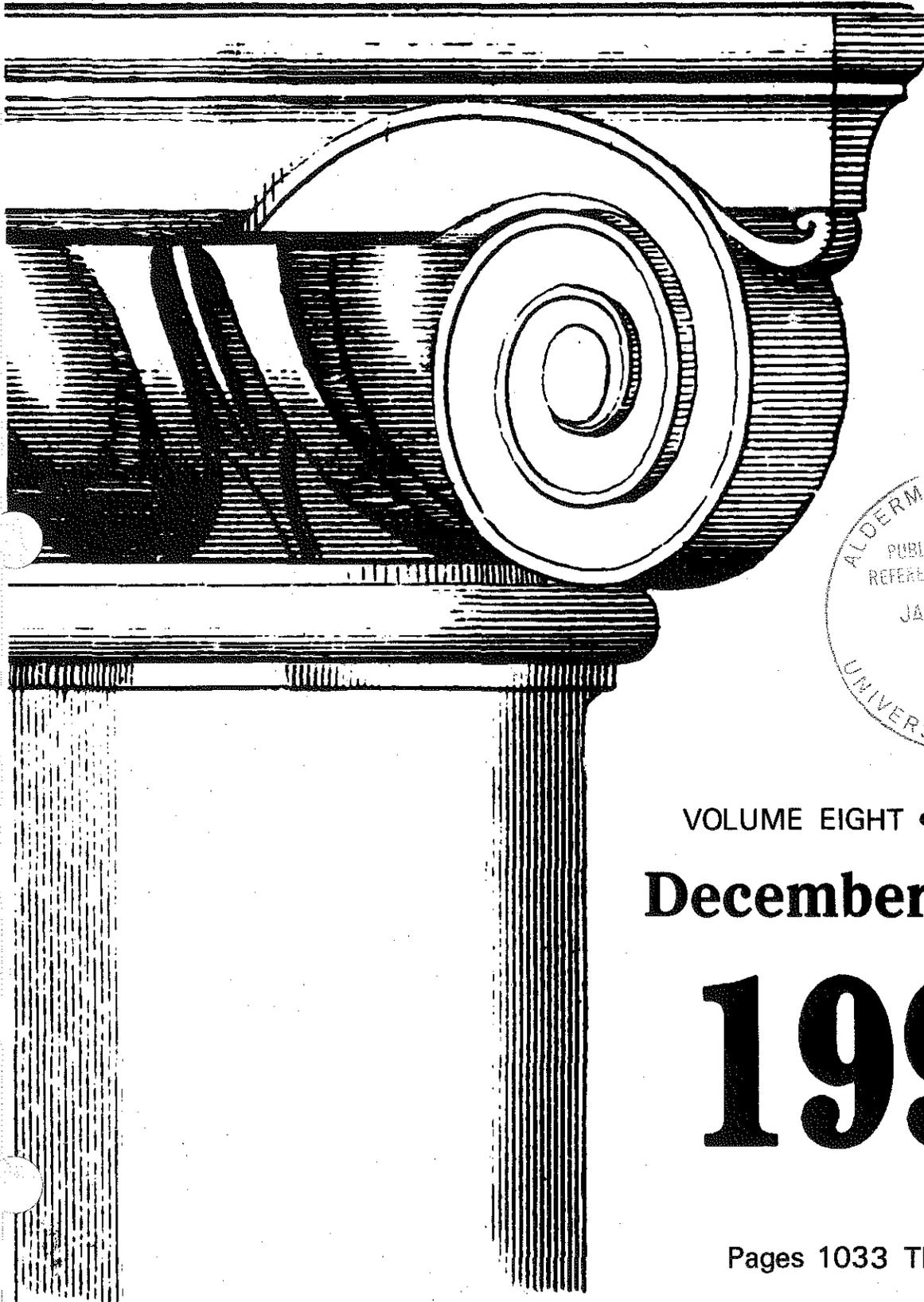
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THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME EIGHT • ISSUE SEVEN

December 30, 1991

1991

Pages 1033 Through 1240

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.

CITATION TO THE VIRGINIA REGISTER

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July 1991 through September 1992

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July 24	Aug. 12
Aug. 7	Aug. 26
Aug. 21	Sept. 9
Sept. 4	Sept. 23
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Symbol Key †

† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER 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 Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-02. Rules and Regulations Governing the Prevention, Control, and Eradication of Bovine Tuberculosis in Virginia.** The purpose of the proposed action is review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions to require testing and subjecting to other requirements within the regulation of (a) all classes of bovidae, (b) all cervidae, (c) all capridae, and (d) one variety of antelope, *Antilocapra americana*; (ii) shortening the time to report cases in which tuberculosis is suspected; and (iii) considering alternative ways of disposing of tuberculosis-infected animals.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737 of the Code of Virginia.

Written comments may be submitted until January 31, 1992.

Contact: Dr. W.M. Sims, Jr., Acting State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481 or SCATS (804) 771-2030.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-03. Prevention, Control, and Eradication of Brucellosis of Cattle.** The purpose of the proposed action is review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions to require testing and subjecting to other requirements within the regulation of (a) all classes of bovidae, (b) all cervidae, (c) all capridae, and (d) one variety of antelope, *Antilocapra americana*; (ii) adding specifics as to precisely which cattle must be tested for brucellosis; and (iii) expanding the number and kind of tests that may be used to test for brucellosis.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737 of the Code of Virginia.

Written comments may be submitted until January 31,

1992.

Contact: Dr. W.M. Sims, Jr., Acting State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481 or SCATS (804) 771-2030.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals and Other Animals or Birds into Virginia.** The purpose of the proposed action is review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions governing the importation of most varieties of deer and one variety of antelope; (ii) revising the standards governing the importation of psittacine birds; and (iii) repealing the provision requiring South American camelids of the genus *Lama* to be tested for bluetongue.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737 of the Code of Virginia.

Written comments may be submitted until January 31, 1992.

Contact: Dr. W.M. Sims, Jr., Acting State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481 or SCATS (804) 771-2030.

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 repealing the existing regulation entitled: **VR 190-05-01. Asbestos Licensing Regulations** and promulgating new regulations entitled: **VR 190-05-1.1. Asbestos Licensing Regulations.** The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, the exemption process and the training requirements.

Statutory Authority: § 36-99.7 and Chapter 5 (§§ 54.1-500 through 54.1-517) of Title 54.1 of the Code of Virginia.

Written comments may be submitted until January 18, 1992.

Notices of Intended Regulatory Action

Contact: Nelle Hotchkiss, Assistant Director, Virginia Asbestos Licensing Program, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Hearing Impaired.** The purpose of the proposed action is to amend current regulations to incorporate guidelines for administration of a Cued Speech Assessment within the section of the regulations related to the Quality Assurance Screening.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard of Hearing, Washington Building, Capitol Square, 1100 Bank Street, 12th Floor, Richmond, Virginia 23219, telephone (804) 225-2570/Voice/TDD ☎ or toll-free 1-800-552-7917/Voice/TDD ☎

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **VR 270-01-0012. Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to provide minimum standards to give guidance and direction to assist schools in their continuing efforts to offer educational programs to meet the needs, interests, and aspirations of all students. The amendments are necessary to reflect changes in the missions of the Board of Education and the Department of Education. The board is also adopting new goals as part of the Standards of Quality.

Statutory Authority: §§ 22.1-19 and 22.1-253.13:3 (B) of the Code of Virginia.

Written comments may be submitted until December 30, 1991.

Contact: Ms. Lin Corbin-Howerton, Lead Policy Analysts, Virginia Department of Education, P.O. Box 6Q, Richmond, Virginia 23216, telephone (804) 225-2092, (804) 225-2543 or toll-free 1-800-292-3820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed action is to amend current regulation in order to provide additional literary fund incentives for local school divisions.

Statutory Authority: §§ 22.1-142 through 22.1-161 of the Code of Virginia.

Written comments may be submitted until January 24, 1992.

Contact: Robert L. Aylor, Director, Accounting and Finance, Department of Education, P.O. Box 6Q, Richmond, Virginia 23216-2060, telephone (804) 225-2040.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-03. Preneed Funeral Planning Regulations.** The purpose of the proposed action is to add additional regulations and clarification to existing regulations regarding preneed funeral planning in the Commonwealth in response to House Bill 1906.

Statutory Authority: §§ 54.1-2803 and 54.1-2820 of the Code of Virginia.

Written comments may be submitted until January 27, 1992.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9907.



DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-200. Sanitary Regulations for Hotels.** The purpose of the proposed action is to specify requirements for hotels to protect public health.

Notices of Intended Regulatory Action

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-13 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

Contact: John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-300. Sanitary Regulations for Summer Camps.** The purpose of the proposed action is to specify the requirements for summer camps to protect the public health.

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-16 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

Contact: John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-400. Sanitary Regulations for Campgrounds.** The purpose of the proposed action is to specify the requirements for campgrounds to protect the public health.

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

Contact: John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-500. Regulations Governing Swimming Pools at Hotels, Motels, Campgrounds, Summer Camps and Related Facilities.** The purpose of the proposed action is to specify the requirements for the operation and

maintenance of swimming pools at hotels, motels, campgrounds, summer camps and related facilities to protect public health.

Statutory Authority: §§ 32.1-12, 35.1-13, 35.1-16 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

Contact: John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-35-700. Swimming Pool Regulations Governing the Posting of Water Quality Test Results.** The purpose of the proposed action is to ensure that all public swimming pools are maintained in a manner which does not adversely affect the public health, welfare and safety.

Statutory Authority: § 32.1-248.1 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

Contact: John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings.** The purpose of the proposed action is to regulate the installation, operation and maintenance of discharging sewage systems (aerobic treatment units, sandfilters, etc.) serving single family dwellings with flows less than 1,000 GPD. These regulations will replace the emergency discharging regulations which will expire on July 29, 1992.

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

Contact: Donald J. Alexander, Director, Bureau of Sewage and Water Services, Division of Sanitarian Services, 1500 E. Main Street, Suite 144, Richmond, VA 23219, telephone (804) 786-1750.

Notices of Intended Regulatory Action

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend § 6.3 of the council's existing regulations to set specific guidelines for when a proposed amendment or modification of a health care institution's current charge schedule is excessive or inadequate.

Statutory Authority: §§ 9-161 D and 9-164 2 of the Code of Virginia.

Written comments may be submitted until February 21, 1992.

Contact: John A. Rupp, Director, 805 E. Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Health Insurance Premium Payments.** The purpose of the proposed action is to establish a methodology for determining when it would be cost effective to pay group health insurance premiums as required by OBRA 90 § 4402.

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

Written comments may be submitted until January 13, 1992, to Wayne Kitsteiner, Benefits Control Manager, Division of Client Services, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300,, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, 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 465-08-01. Regulations for Certification of Occupational**

Therapists. The purpose of the proposed action is to (i) define the Test of English as a Foreign Language; (ii) correct a technical error of reference in § 2.2. C and interchange subsections B and C; (iii) establish the Test of English as a requirement for certification for foreign-trained occupational therapists; and (iv) grammatically correct § 2.3 F.

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

Written comments may be submitted until January 2, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229.

Contact: Eugenia K. Dorson, Deputy Executive Director of Licensure, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9923.

BOARD OF PROFESSIONAL COUNSELORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-02. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed action is to consider the deletion of oral examinations and invite public comment.

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

Written comments may be submitted until December 31, 1991.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9912.

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

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services intends to consider amending regulations entitled: **VR 270-01-0003, 470-02-01, 615-29-02 and 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.** The purpose of the proposed action is to establish standards to provide children in residential facilities with at least a minimum level of care. The current effort is intended to amend and clarify those sections of standards which address intake

Notices of Intended Regulatory Action

and initial service planning (Part V, Articles 1-15). Only those sections of the regulation that address intake and initial service planning will be considered for amendment.

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

Written comments may be submitted until January 30, 1992.

Contact: Rhonda Merhout Harrell, Assistant Coordinator, Office of Coordinator, Interdepartmental Regulation, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider repealing existing regulations and promulgating new regulations entitled: **VR 615-25-01. Minimum Standards for Licensed Group Family Day Care Homes.** The purpose of the proposed action is to repeal the existing Minimum Standards Licensed Family Day Care Homes while concurrently promulgating Minimum Standards for Licensed Group Family Day Care Homes.

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

Written comments may be submitted until January 2, 1992, to Gayle Turner, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-12. Hauling Permit Travel Regulations.** The purpose of the proposed action is to amend § 3.01 (a), (b) and (c) of the Hauling Permit Manual so that the department can participate in a SASHTO multi-state permitting agreement.

Statutory Authority: §§ 33.1-12 (3) and 33.1-12 (10) of the Code of Virginia.

Written comments may be submitted until January 30, 1992, to Mr. W.W. Woodward, Jr., Virginia Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219.

Contact: Mr. R.M. Ketner, III, Permit and Truck Weight Manager, Virginia Department of Transportation, Maintenance Division, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-2810.

DEPARTMENT OF THE TREASURY (STATE TREASURER)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Treasurer intends to consider promulgating regulations entitled: **VR 640-04. Escheats Generally Statute Regulations.** The purpose of the proposed action is to adopt necessary rules and regulations to carry out the provisions of the Escheats Generally Statutes.

Statutory Authority: § 55-200.1 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-3131.

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 amending regulations entitled: **VR 672-10-1. Hazardous Waste Management Regulations.** The purpose of the proposed action is to maintain equivalency between Virginia's program and the federal hazardous waste management program and is in response to changes in the federal rules promulgated between July 1, 1990, and June 30, 1991.

Statutory Authority: § 10.1-1402(11) of the Code of Virginia.

Written comments may be submitted until January 29, 1992.

Contact: Karol A. Akers, Policy and Planning Manager, Department of Waste Management, 101 N. 14th Street, 11th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 225-2966.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: VR 240-04-2. Rules Relating to the Forfeited Drug Asset Sharing Program.

Statutory Authority: §§ 19.2-386.4, 19.2-386.10 and 19.2-386.14 of the Code of Virginia.

Public Hearing Date: April 1, 1992 - 2:30 p.m.
(See Calendar of Events section for additional information)

Summary:

These proposed rules are submitted in accordance with §§ 19.2-386.4, 19.2-386.10 and 19.2-386.14 of the Code of Virginia.

The proposed rules outline the procedures required to participate in the Forfeited Drug Asset Sharing Program. This program is administered by the Department of Criminal Justice Services and 90% of the proceeds of forfeited drug assets are returned to the law-enforcement community.

It is intended that final regulations will become effective on July 28, 1992.

VR 240-04-2. Rules Relating to the Forfeited Drug Asset Sharing Program.

§ 1. Definitions.

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

"Agency" means any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture.

"Agency administrator" means any chief of police, sheriff, commonwealth's attorney or agency head of a federal, state or local agency or office.

"Asset" means any property or interest in property, whether tangible or intangible, real or personal.

"Board" means the Criminal Justice Services Board.

"Chief administrative officer" means the officer vested with the administrative and executive function of a

political subdivision (e.g., city manager, county manager, etc.), or in the case of an executive branch agency, the director, administrator, superintendent or other equivalent position as provided by law, unless such agency operates under a supervisory board as defined in § 9-6.25:3 of the Code of Virginia, in which case the chairman of the supervisory board shall be deemed "chief administrative officer."

"Department" or "DCJS" means the Department of Criminal Justice Services.

"Designated seizing agency" means the agency or office which initiates the seizure, or which retains possession of the seized property. Designated seizing agency may include the agency chosen by mutual decision of the participating agencies.

"Director" means the chief administrative officer of the Department of Criminal Justice Services.

"In-kind property" in this context means the actual property other than cash seized, forfeited and returned to the seizing agency for law-enforcement purposes. In-kind property includes property which is exchanged for original in-kind property.

"Proceeds" means actual cash forfeited, and the cash value returned from the sale of forfeited property, including property that may have been returned "in-kind" and sold during a one-year period for a value greater than \$250.

§ 2. Applicability.

This regulation applies to all agencies or offices, insofar as they participate in the seizure and forfeiture of drug assets under Virginia law.

§ 3. Asset seizure.

A. Property subject to seizure under § 18.2-249, that is seized with the intent to forfeit to the Commonwealth and retain the property or proceeds for law-enforcement use pursuant to Chapter 22.1 of Title 19.2, shall be reported to the department provided that the property or cash value exceeds \$100.

B. The agency administrator of the designated seizing agency will file a DCJS Form 998, Asset Seizure Reporting Form, within 21 days of seizure. This form calls for detailed information regarding the description and location of property. If more than one agency participates in the seizure, the names, addresses and agency administrators of

Proposed Regulations

all participating agencies or offices shall be reported to the department on Form 998.

§ 4. Report of proceeds, costs and asset sharing agreements.

Once the court has ordered disposition of the forfeited asset(s) pursuant to § 19.2-386.11, the designated seizing agency will file a DCJS Form 999, Seized Property Disposition/Sharing Decision Form, with the department. This form should be accompanied by:

1. Copy of the court order;
2. Petition for in-kind property;
3. List of costs incurred to manage seized assets;
4. Cashier's check or money order in the amount of the net forfeited proceeds (total proceeds minus amount for costs incurred that are allowable under § 19.2-386.12 or other costs if approved by the court) made payable to the Treasurer of Virginia

§ 5. Remission of innocent property interests.

Petitions for remission by innocent property holders or innocent lienholders shall be filed with the Department of Criminal Justice Services at 805 East Broad Street, 10th Floor, Richmond, VA 23219.

Petitions for remission shall contain such information as will allow the department to identify the forfeiture involved, including the name of the circuit court from which the forfeiture was ordered. The petition shall clearly and specifically allege the grounds upon which petitioner seeks remission, and the statutory basis for relief.

§ 6. Valuation of in-kind property for purposes of distribution.

A. Valuation of in-kind property shall be done in all cases of distribution upon which there is not agreement among participating jurisdictions.

B. Evidence of value shall be submitted by the agency seeking possession of the property, and may be submitted by any participating agency.

C. Evidence of value may be submitted in any form, including appraisals, assessments, references to "book" value, etc., as the submitting agency deems necessary to establish the fair market value (FMV) of the property.

D. Final determination of fair market value shall be made by the Criminal Justice Services Board based upon a review of all evidence of value presented to it.

E. The cost of an appraisal will be recognized as a cost incident to the custody, preservation and management of

the property, and may be reimbursed to the agency submitting the appraisal from total forfeiture funds prior to the distribution of net proceeds. If there are no proceeds to be distributed, the cost of appraisal will not be reimbursed.

§ 7. Distribution procedures for in-kind property and for proceeds.

A. Distribution of in-kind property when all parties are in agreement.

1. The submission of a DCJS Form 999 with all attachments, including the agreement between the law-enforcement agencies, shall constitute a petition for return of in-kind property when there is agreement between the agencies as to the disposition of such in-kind property. These petitions shall be treated by the department as approved, provided that the clear and reasonable law-enforcement need for the forfeited property has been demonstrated (§ 19.2-386.14 C (ii)) in the petition.

2. If the department cannot ascertain the "clear and reasonable law-enforcement need for the forfeited property," it may seek such additional information as will allow it to make the determination.

3. If the department is unable to determine the "clear and reasonable law-enforcement need for the forfeited property," it shall submit the question to the next regularly scheduled meeting of the Criminal Justice Services Board for determination.

B. Distribution of disputed in-kind property.

1. Any participating agency or office may petition the department for the return of any forfeited motor vehicle, boat or aircraft, or other tangible personal property within 10 days of the court's finding of compliance with § 19.2-386.14 A (iii).

2. The petition for return of in-kind property shall be on the petitioning agency's letterhead and shall contain the name, address, telephone number, and name of the agency administrator and of all other participating agencies or offices known to have been involved in the seizure and forfeiture.

3. Petitions shall be filed with the department at 805 East Broad Street, 10th Floor, Richmond, VA 23219.

4. Upon receipt of a disputed petition for distribution of in-kind property, the department shall notify the Chairman of the Criminal Justice Services Board, and the process for resolution contained in subsection C of this section relating to joint agency sharing of forfeited assets shall be implemented. This shall include the mailing of notices for responsive petitions.

5. Findings by the committee or the board shall

Proposed Regulations

include without limitation the following:

a. A determination of the fair market value of the in-kind property.

b. A determination of the proportional share due to each participating agency or office involved in the forfeiture.

c. An amount, if any, which a participating agency must pay to the department to keep the property, and set a reasonable time for the agency to pay that amount to the department.

d. A determination of the "clear and reasonable law-enforcement need for the forfeited property."

C. Joint agency sharing of forfeited assets.

1. In all cases in which there is agreement between participating agencies for the distribution of proceeds or in-kind property, distribution shall be made by the department according to the terms of the agreement contained on Form 999, or evidence of agreement attached to that form, subject to a petition challenging the agreement and subject to concurrence by the board of a reasonable law-enforcement need for the in-kind property pursuant to § 7 A 3.

2. Any agency or office not in agreement as to the distribution of forfeited proceeds may petition the Criminal Justice Services Board for a proportional share of the proceeds.

3. The petition shall be filed on the letterhead of the petitioning agency and shall identify all other participating agencies or offices.

4. The petition shall identify the proportional share of proceeds to which the petitioning agency believes it is entitled, and the grounds upon which it relies for that determination.

5. The petition shall be filed at the Department of Criminal Justice Services, 805 E. Broad Street, 10th Floor, Richmond, VA 23219.

6. The petition shall be filed within 21 days of the entry of the court's forfeiture order in the case.

7. Upon receipt of the petition for participation in distribution, the department shall forward copies of the petition to all known participating agencies or offices with a request for a responsive petition.

8. Responsive petitions shall be filed at DCJS within 14 days of receipt by the agency administrator.

9. Upon receipt at DCJS of all petitions related to a particular forfeiture, or upon expiration of the time for receipt of all petitions, DCJS shall prepare a

decision package for the forfeited assets distribution committee.

D. Hearing.

1. Upon receipt of a petition raising any question or contesting any distribution within the authority of these regulations, the petition shall be referred to the chairman of the forfeited assets distribution committee (FADC) of the Criminal Justice Services Board.

2. The chairman of the FADC shall designate a time and place of the meeting of the committee.

3. Meetings shall be held no later than 45 days after receipt of a petition for contested distribution, unless continued from time to time as required.

4. All participating agencies or offices shall be notified of the time and place of the meeting.

5. The FADC or board shall consider the following criteria in reviewing petitions before it:

a. General. The degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-enforcement effort with respect to the violation of law on which the forfeiture is based.

b. Specific.

(1) Whether the agency or office originated the information that led to the seizure, and whether the agency obtained such information by use of its investigative assets, or through fortuitous events;

(2) Whether the agency provided unique or indispensable assistance;

(3) Whether the agency initially identified the asset for seizure;

(4) Whether the agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state law;

(5) Whether the agency could have achieved forfeiture under federal law, with favorable consideration given to an agency which could have forfeited the assets on its own, but joined forces with another agency to produce a more effective investigation;

(6) Upon reviewing all petitions and arguments in the case, and after weighing the factors and criteria listed in these regulations, the FADC or board shall determine by majority vote the proportional share of the proceeds, and shall direct the department to distribute the proceeds according to law;

(7) A decision of the FADC will be final for purposes of distribution of forfeited assets, unless, within 10 days of the FADC decision, a participating agency notifies the department of an appeal to the Criminal Justice Services Board;

(8) Appeals of FADC decisions shall be placed on the agenda of the next Criminal Justice Services Board meeting;

(9) Appeals of FADC decisions will be heard by the full board upon the report of the committee, and upon such additional evidence and information as introduced during the meeting by participating agencies or offices;

(10) The decision on appeal by the Criminal Justice Services Board shall be final.

§ 8. Certification; maintenance of records; financial statement.

A. Prior to disbursement of proceeds by the department, the chief administrative officer of the participating jurisdiction shall sign on its official stationery the following certification:

"I certify that the proceeds applied for and any income or interest derived therefrom will be used for law-enforcement purposes, and will not be used to supplant existing funds from any source whatsoever."

B. Agencies or offices which participate in the distribution of property or proceeds under Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, agree to maintain records of the use and handling of the respective proceeds or property and any income or interest derived therefrom for a period of three years from receipt. The department may audit the records of the forfeited assets at any time during those three years, and shall report the findings of any such audit to the Criminal Justice Services Board.

C. The department requires that all participants in the Forfeited Asset Sharing Program submit an annual financial statement of receipts and expenditures related to the program, certifying that the proceeds applied for and any income or interest derived therefrom was used for law-enforcement purposes and was not used to supplant existing funds from any source. This certification and a financial statement shall be submitted to the department six months after the close of the designated fiscal year.

DCJS Department of Criminal Justice Services

DCJS 998

ASSET SEIZURE REPORTING FORM
Please type or use ball point pen to complete and press down firmly. To be filed with DCJS Form 21, Copy of Seizure.

7. Legal Grounds
 A = Code of Virginia 18.2-249

6. Property Seized

A = Vehicle
 B = Currency/Other Financial Instruments
 C = Real Property/Business
 D = Vessel
 E = Aircraft
 F = Jewelry
 G = Jewelry
 H = Electronic Equipment
 I = Foodstuff
 J = Art, Antiques
 K = Animals/Livestock
 L = Other

8. Detailed Property Description
 Vehicle = Year, Make, Model, VIN, Color, License, State, Make, Cylinder, Suitable for Use.
 Currency = Cash, Checking/Savings Account, Certificate of Deposit, Savings Certificate, Stock, Bond, Treasury Bill, Letter of Credit, Money Order, other.
 Real Property =
 DT = Detached Residential CO = Commercial
 TC = Townhouse/Condo FR = Farm/Ranch
 MU = Multi-unit Residential B = Business (no real property)
 LV = Land (vacant)
 Vessel = Year, Make, Model, Type of Cargo, Vessel Name, Registration #, Home Port, Length, Country of Registry.
 Aircraft = Year, Make, Model, Serial #, Tail #, # and Type of Engine, (piston, jet, other), Hours logged.

INSTRUCTIONS

1. Enter lead agency processing seized property.
2. Enter internal case number assigned by lead agency.
3. Assigned by DCJS.
4. Enter date property was seized for forfeiture.
5. Enter appropriate code.
6. Enter address location where property was seized.
7. Enter appropriate code.
8. Enter approximate code and/or detailed description of property, or attach a copy of your internal department seizure form.
9. Enter name of person from whom property was seized.
10. Enter name and address of lien holder having a monetary interest in the property.
11. Enter name of storage facility where property is retained.
12. Enter known participating agencies.
13. Print name and title of contact officer with higher signature and date.
14. Print name and title of police chief, sheriff, or superintendent of State Police with higher signature and date.

FORWARD TO:
 Department of Criminal Justice Services
 805 East Broad Street, 10th floor
 Richmond, Virginia 23219

DCJS Department of Criminal Justice Services

DCJS 998

ASSET SEIZURE REPORTING FORM
Please type or use ball point pen to complete and press down firmly. To be filed with DCJS Form 21, Copy of Seizure.

7. Legal Grounds
 A

6. Location
 Seizure Took Place: _____
 Description of Property: (see reverse) _____
 b) _____
 c) _____

9. Seized from:
 Name a) _____ b) _____ c) _____
 Address _____

10. Lien/Mortgage holder(s):
 Name a) _____ b) _____ c) _____
 Address _____

11. Property stored at:

12. Joint Seizure Participating Agencies: (see reverse)

13. Contact Officer:
 Name _____ Title _____ Phone no _____
 Signature _____

14. Chief/Sheriff/Superintendent:
 Name _____ Title _____ Phone no _____
 Signature _____

Original to DCJS. * Value is Commonwealth Attorney. * File to participating agency.

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DCJS 999

SEIZED PROPERTY DISPOSITION/ SHARING DECISION FORM

Please type or use call point pen to complete and press firmly.
To be filed with DCJS with court order and petition for in-kind property.

1. Seizing Agency	
2. Seizing Agency Case No.	3. DCJS Seizure No.
4. Disposition of Property Seized: <i>(see reverse)</i>	5. Date of Court Disposition:
6. Conditions of Disposition: <i>(see reverse)</i>	
7. Contact Officer: <i>(Print)</i>	
Name _____ Title _____ Date _____	
Signature _____	
8. Multiple Agencies: <input type="checkbox"/>	9. Joint Agency Sharing Decision:
10. Certification: I certify the above information is true and accurate, that the property transferred will be used for the law enforcement purpose stated and that all monies received pursuant to this request will be deposited and accounted for consistent with applicable state laws, regulations and court orders.	
Chief/Sheriff/Superintendent: <i>(Print)</i>	
Name _____	Name _____
Title _____	Title _____
Signature _____	Signature _____
11. CJS Board Decision Required: Yes <input type="checkbox"/> No <input type="checkbox"/>	12. Intended Law Enforcement Use of Property: <i>(see reverse)</i>
13. Fiscal Officer(s) to Receive Forfeited Proceeds: <i>(Print)</i>	
Name _____ Title _____	
Address _____ Telephone _____	
Name _____ Title _____	
Address _____ Telephone _____	
Name _____ Title _____	
Address _____ Telephone _____	

Original to DCJS • Yellow to Commonwealth Attorney • Blue to originating agency

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CODES

Disposition of Property Seized

- F = Forfeiture
- D = Dismissal
- RL = Release to innocent lien holder
- RO = Release to innocent owner

Intended Law Enforcement Use

- A = Salaries
- B = Purchase vehicles
- C = Purchase equipment
- D = Place into official use
- E = Other (please explain)

INSTRUCTIONS

1. Enter lead agency processing seized property.
2. Enter internal case number assigned by lead agency.
3. Enter assigned DCJS Seizure No.
4. Enter appropriate code.
5. Enter date from court order of disposition.
6. Enter any special conditions ordered by the court. *(attach copy)*
7. Print name and title of contact officer with his/her signature and date.
8. Check box if seizure was a combined effort among jurisdictions.
9. Enter sharing agreement between agencies that participated jointly in the seizure. (Percentage split of cash, vehicles to be placed in service, etc.) *(attach copy)*
10. Print name and title of certifying Police Chief, Sheriff, or Superintendent of State Police with his/her signature and date.
11. Check yes if an agreement can not be made among agencies as to the sharing percentage.
12. Enter appropriate code.
13. Enter name, title, address and telephone number of agency fiscal officer.

ATTACHMENTS

- 1) Check for all proceeds made payable to: *Treasurer of Virginia*
- 2) Copy of Court Order
- 3) Supplement to Form 999 if necessary
- 4) Copy of multiple agency sharing agreement on departmental letterhead stationery

FORWARD TO:

Department of Criminal Justice Services
805 East Broad Street, 10th floor
Richmond, Virginia 23219

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Title of Regulation: VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing Impaired .

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Public Hearing Dates:

January 9, 1992 - 6 p.m.

January 14, 1992 - 6 p.m.

January 18, 1992 - noon

January 21, 1992 - 6 p.m.

January 28, 1992 - 6 p.m.

January 31, 1992 - 6 p.m.

February 1, 1992 - 2 p.m.

(See Calendar of Events section for additional information)

Summary:

These regulations are amended to incorporate a cued speech assessment in the Quality Assurance Screening (QAS). Cued speech is a system of hand shapes used in conjunction with speech to assist in lip reading. There are cued speech transliterators in the school systems using this communication method to convey information to and receive information from individuals who are deaf. By including such as assessment, the Department for the Deaf and Hard of Hearing (VDDHH) demonstrates the desire to meet the needs of all deaf and hard of hearing individuals within the Commonwealth by providing standardized assessment of skill level.

VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"ASL" (American Sign Language) means the manual language predominantly used by members of the deaf community.

"Assessment team" refers to the group of individuals who serve on the panel for Virginia Quality Assurance Screenings.

"Candidate" refers to any person who has applied to take the Virginia Quality Assurance Screening.

"Certified interpreter" refers to an advanced level interpreter who holds valid certification issued by the

Registry of Interpreters for the Deaf, Inc., or a cued speech interpreter certified by the National Cued Speech Association.

"Closed screening" means a screening which may be offered to a group who has requested a screening for at least eight candidates within that group. Candidates on the waiting list to be screened may not be notified of closed screenings.

"Code of ethics" means the guidelines for interpreters established by the national Registry of Interpreters for the Deaf, Inc.

"Consumer" refers to any individual with or without a hearing impairment who is a recipient of interpreter services.

"Coordinator" refers to the Coordinator of Interpreter Programs the Virginia Quality Assurance Screening in the Department for the Deaf and Hard of Hearing.

"Cued speech" means the phonetically-based hand supplement to speechreading which is independent to all sign language modalities.

"Deaf" refers to any person whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken communication is through visual input such as lip reading, sign language, finger spelling, reading or writing.

"Department" means the Virginia Department for the Deaf and Hard of Hearing.

"Director" refers to the Director of the Virginia Department for the Deaf and Hard of Hearing.

"Directory" means the listing of qualified interpreters for the hearing impaired deaf and hard of hearing as compiled by the department.

"Expressive" means to convey a spoken message into a visual equivalent.

"Freelance" means to contract independently without long-term contractual commitments to any one employer.

"Hard of hearing" refers to any person whose hearing is impaired to an extent that makes hearing difficult but does not preclude the understanding of spoken communication through the ear alone, with or without a hearing aid.

"Hearing" refers to any person who is able to comprehend conversational speech without an assistive device and who can speak intelligibly.

"Hearing impaired" refers to any person who is unable to comprehend conversational speech without the aid of an

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assistive device, such as a hearing aid, audible loop, or interpreter.

"Interpret" means to accurately convey messages without personal interjection between two or more parties using two languages.

"Interpreter" refers to any person who intermediates for the purpose of communication between two or more parties using different languages or different forms of the same language and refers to sign language, oral, and cued speech interpreters and transliterators. When the term is used to specifically identify an interpreter who interprets using ASL, this text will so indicate.

"Interpreting (ASL)" means the specific process of interpreting ASL vocabulary, structure, and components and does not include oral, cued speech, or other forms of interpreting using an English-based structure. The term is used specifically herein when discussing components of the VQAS assessment process.

"Manually-coded English" means any form of manual communication which utilizes specified handshapes to represent English syntax.

"MLS" (Minimal Language Skills) means a communication model, which may include informal gestures and home-signs, characterized by limited, or minimal, expressions based on a recognized language.

"Oral" means a communication mode which is dependent upon speech reading and spoken communication.

"Panel" refers to the people selected to serve on an assessment team of the Virginia Quality Assurance Screening.

"Panelist" refers to any person who has satisfied the requirements for serving as a member of the assessment team for quality assurance screenings during live panel rating sessions.

"QAS" (Quality Assurance Screening) means the process of assessing candidates to determine a level of interpreting competency. Standards established for the QAS are based on those originally set forth by the national Registry of Interpreters for the Deaf, Inc.

"Qualified interpreter" refers to an interpreter who currently holds valid national certification or a state screening/evaluation level and is able to understand and be understood by the consumers.

"Rater" refers to any person who has satisfied the requirements for serving as a member of the assessment team for rating videotapes of candidates who participate in the Virginia Quality Assurance Screening.

"Receptive" means to convey a visual message into a

spoken equivalent.

"RID" (Registry of Interpreters for the Deaf, Inc.) means the national governing body membership organization of the interpreting profession.

"Screening" means the Virginia Quality Assurance Screening.

"Screening level" means the level of competency awarded to an interpreter who has successfully satisfied the minimum standards established for VQAS.

"Service provider" refers to the person requesting interpreter services who may or may not also be the consumer.

"Transliterate" means to accurately convey messages without personal interjection between two or more parties using different forms of the same language, such as written or spoken English and a manually-coded form of English.

"VQAS" means Virginia Quality Assurance Screening, which is designed to assess interpreting and transliterating skills of interpreters who facilitate communication between persons who are deaf or hard of hearing and persons who are hearing, and is administered by the Virginia Department for the Deaf and Hard of Hearing.

PART II.

ADMINISTRATION OF INTERPRETER SERVICES.

§ 2.1. Responsibilities of the department.

A. The department will:

1. Compile a directory of qualified interpreters; Refer and assign only qualified interpreters to consumers and service providers; and
2. Compile a directory of qualified interpreters.

B. Upon request, the department may:

1. Distribute the directory upon request;
2. Maintain a list of directory recipients and distribute updates; or
3. Refer only qualified interpreters to consumers and service providers; and
4. Assist consumers and service providers in selecting an appropriate interpreter when requested.

B. C. The department may:

1. Assign interpreters when requested by a consumer or service provider; and

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2. Compensate interpreters from available funds appropriated for that purpose ; and

3. Refer qualified interpreters directly to the service provider or consumer.

E. D. The department will provide, upon request, information about the different levels of qualifications and the various modes of communication and will assist consumers in selecting an interpreter with the appropriate skills.

§ 2.2. Directory of qualified interpreters.

A. A qualified interpreter listed in the directory ~~holds~~ shall hold at least one of the following credentials:

1. RID certification;
2. Current VQAS screening level;
3. Certification issued by the National Cued Speech Association; or
4. A screening level or recognized evaluation from another state when:
 - a. The credentials meet the minimum requirements of VQAS; and
 - b. The credentials are valid and current in the state issued.

NOTE: Notwithstanding subdivision 4 of this subsection, the interpreter ~~must receive~~ shall hold a VQAS screening level or national certification prior to one year from the date listed in the directory.

B. Before an interpreter ~~will~~ shall be listed in the directory, the department will:

1. Verify the validity of all credentials;
2. Ensure that all credentials are current; and
3. Obtain a written request from the interpreter to be listed in the directory as a qualified interpreter.

§ 2.3. Appeal procedure.

If an interpreter desires to contest the department's decision to exclude that interpreter's request to be listed as a qualified interpreter, that interpreter must file a written appeal with the director within 30 working days of the determination. The director, or designee, shall provide an informal conference with that interpreter within 30 working days from the date received. *The final decision will be determined by the director who will provide written notification of that decision within 30 working days of the conference.*

PART III. VIRGINIA QUALITY ASSURANCE SCREENINGS (VQAS).

In order to maintain the referenced directory and ensure the maintenance of quality interpreter services, the department will administer Virginia Quality Assurance Screenings in accordance with the provisions specified in this part.

§ 3.1. Notification of intent to be screened.

Candidates interested in being screened should contact:

QAS Coordinator
Virginia Department for the Deaf and Hard of Hearing
Washington Building, 12th Floor
1100 Bank Street
Richmond, Virginia 23219-3640
(804) 225-2570 V/TDD in Richmond
(800) 552-7917 V/TDD Toll-free Statewide

§ 3.2. Type of QAS screening.

Candidate will notify the administering agency of intent to participate in the QAS and which assessment will be taken.

All requests to be screened will be acknowledged by the coordinator, or designee, in writing within 30 working days of receipt of the request.

~~§ 3.2.~~ § 3.3. Fee for screening.

The department may assess a fee for ~~any~~ each part of the screening. The fee shall not exceed the actual cost of administration. Notification of current fees shall be provided with registration forms (~~§ 3.4~~ § 3.5.). Payment of fees shall be ~~made received~~ prior to ~~administration of~~ the candidate's participation in any portion of the assessment.

~~§ 3.3.~~ § 3.4. Scheduling of screenings.

The department may offer a screening whenever eight or more candidates are waiting to be screened but screenings may be cancelled when fewer than six candidates apply to be screened as scheduled. A minimum of two screenings per year will be offered in geographical regions most conducive to the accessibility of candidates and , *if applicable, panelists or raters .*

~~§ 3.4.~~ § 3.5. Notifying and scheduling of candidates.

Candidates ~~will~~ shall be notified by ~~mail~~ in writing of the next scheduled screening at least 10 days prior to the scheduled date. Closed screenings may be offered upon request to groups of eight or more who satisfy the requirements established by the department for offering a screening (~~§ 3.3.~~ § 3.4.).

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Candidates must complete and return the appropriate registration form requesting to be screened. The coordinator will be responsible for scheduling and confirming requests in the order received. Candidates whose requests are received after the screening schedule has been filled shall be retained as alternates and may be contacted in the event of a cancellation or assigned to another assessment site/date.

§ 3.5. § 3.6. VQAS assessment process.

Each candidate's performance will be assessed either by a screening panel present during the assessment or videotaped and rated by individual raters at varying locations around the state. Panelists/raters will work within their specialty areas.

A. Assessment team.

1. A screening panel or individual ratings shall consist of at least three but no more than five panelists /raters with at least one panelist/rater who is hearing and one hearing-impaired panelist /rater who is deaf or hard of hearing.
2. Hearing Panelists /raters who are hearing shall be qualified interpreters who have successfully completed VQAS assessment team training as administered by the department.
3. Hearing-impaired Panelists /raters who are deaf or hard of hearing shall have successfully completed VQAS assessment team training as administered by the department.
4. All panelists /raters shall be fluent in English and the second language modality being assessed.
5. Employees of the department may not serve as panelists /raters.

B. Screening components.

Each screening is comprised of ~~three~~ two major categories:

1. Part I - Code of Ethics: (General knowledge and application). ~~May~~ Shall be administered prior to the other two categories category - orally (in front of a live panel, on videotape, or both) or in writing (in the presence of a monitor).
2. Part II - Skills Assessment (shall be administered to a candidate only after he has demonstrated the required competency criteria on Part I).
 - a. Sign Language Assessment. Interpreting (ASL) Performance } : (Expressive and receptive abilities using ASL vocabulary, structure, and components) and Transliterating (English) Performance (Expressive and receptive abilities using a form of

manually-coded English). The assessment may be administered in front of a live panel, on videotape, or both.

b. Cued Speech. Transliterating Performance: Expressive and receptive abilities using Cued Speech hand shapes; a form of manually-coded English. The assessment

~~3. Part III - Transliterating (Performance): (Expressive and receptive abilities using a form of manually-coded English):~~ may be administered in front of a live panel, on videotape, or both.

C. Awarding of screening levels.

Each panelist /rater will independently assess a candidate's performance and assign a raw score for the required competencies within each category (Parts I ; and II ; ~~and III~~). Raw scores will be totaled for each part, converted to percentages, and averaged with the other panelists' / raters' scores. ~~Part Parts I may and II will be scored independently of each other by the department when administered in writing .~~ Depending on the results, a candidate may:

1. Not receive any level at ~~this~~ that time;
2. Receive a level for Interpreting (ASL) only;
3. Receive a level for Transliterating Sign Language only; ~~or~~
4. Receive a level for both Interpreting (ASL) and Transliterating Sign Language; or
5. Receive a level for Transliterating Cued Speech only .

D. Criteria for screening levels.

A screening level of I, II, III, or IV will be awarded to candidates who satisfy the minimum competency requirements. (Refer to § 3.5 § 3.6 B Screening Components.) These minimum requirements are:

1. 90% Code of Ethics (Part I) and
2. Performance Scores Parts (Part II and III (Interpreting or Transliterating):
 - a. 95% - Level IV
 - b. 80% - Level III
 - c. 65% - Level II
 - d. 50% - Level I

NOTE: A Level will not be awarded Candidate may not participate in a Performance Assessment until

the candidate has achieved 90% competency has been demonstrated on Part I, the Code of Ethics assessment.

E. The department will notify candidates in writing of the status of their screening results within 90 working days of the screening date.

§ 3-6. § 3.7. Validity period.

A screening level, or the results of any part as described in § 3-5 § 3.6 B, shall remain valid for three years from the date of the letter of notification .

§ 3-7. § 3.8. Appeal procedure.

If a candidate desires to contest the results of any part of a screening, the candidate must file an appeal with the director within 30 calendar days of the date of the adverse decision. The director, or designee, shall provide for an informal conference with the candidate within 30 working days. The only remedy which the director may award for the Code of Ethics (Part I) is the opportunity to retake the screening at the next scheduled date. The only remedy which the director may award for the performance component (~~Parts Part II and III~~) is the opportunity to be reassessed by additional panelists /raters within 90 working days.

§ 3-8. § 3.9. Confidentiality.

All QAS materials shall be kept confidential by department personnel and other persons authorized by the department to view such materials. Candidate's scores shall also be confidential and shall not be released to persons other than the candidate without the candidate's written permission.



DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: ~~VR 355-30-01~~ 355-30-000-06 . Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 et seq. of the Code of Virginia.

Public Hearing Date: February 10, 1992 - 9 a.m.
(See Calendar of Events section for additional information)

Summary:

The proposed amendment to the Virginia Medical Care Facilities Certificate of Public Need (COPN) Rules and Regulations brings the current regulations into compliance with the recent amendment to the Virginia Medical Care Facilities COPN Law which became effective on July 1, 1991. The amendment (i) establishes fees for COPN applications to be applied to the expenses for administration and operation of the COPN program; (ii) imposes time limitations on the schedules for completion and provides maximum limits on capital cost increases for authorized projects; (iii) allows the commissioner to condition the approval of COPNs on an applicant's agreement to provide care to indigents or accept patients requiring specialized care and provides penalties for noncompliance with these conditions; (iv) requires registration of certain capital expenditures of \$1,000,000 or more by owners of medical care facilities, specialized centers or clinics, or physicians offices; (v) modifies the data reporting requirements for certain deregulated clinical health services and provides penalties for noncompliance with data reporting and registration requirements; and (vi) provides a structured application batching process and incorporates procedures for the commissioner to request proposals for certain types of projects.

With the exception of the application batching process and the procedures for requests for proposals, the proposed amendment to the regulations was first promulgated as emergency regulations effective July 1, 1991.

VR 355-30-000-06. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

**PART I.
DEFINITIONS.**

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

"Acquisition" means an expenditure of (i) \$700,000 or more that changes the ownership of a medical care facility or (ii) \$400,000 or more for the purchase of new major medical equipment. It shall also include the donation or lease of a medical care facility or new major medical equipment. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock.

"Amendment" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in these regulations. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care

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facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Application fees" means fees required to be submitted with a project application and application for a significant change. Fees shall not exceed the lesser of 0.5% of the proposed capital expenditure or cost increase for the project or \$5,000.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of person.

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. See §§ 5-8 and 6-5 § 5.6.)

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's

decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Informal fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facilities" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements

from third party health insurance programs or prepaid medical service plans. For purposes of these regulations, only the following medical care facility classifications shall be subject to review:

A. "Medical care facility classifications" means the following:

- a. General hospitals.
- b. Sanitariums.
- c. Nursing homes.
- d. Intermediate care facilities.
- e. Extended care facilities.
- f. Mental hospitals.
- g. Mental retardation facilities.
- h. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.
- i. Specialized centers or clinics developed for the provision of out-patient or ambulatory surgery.
- j. Rehabilitation hospitals.

2. "Exclusions" means that the following shall not be included as a medical care facility classification subject to review:

- a. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.
- b. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. See definition of "owner."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in these regulations.

"Owner" means any person which has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the applicant for a certificate of public need; the regional health planning agency for the health planning region in which the proposed project is to be located; any resident of the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within the geographic area served or to be served by the applicant; any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review; third party payors who provide health care insurance or prepaid coverage to 5% or more patients in the health planning region in which the project is proposed to be located; and any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office.

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § 15.1-1402 of the Code of Virginia.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes,

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but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See § 7-3 § 6.3 on Progress.

"Project" means:

A. The establishment of a medical care facility; See definition of medical care facility.

B. An increase in the total number of beds in an existing or authorized medical care facility.

C. Relocation of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code of Virginia.

D. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-123 of the Code.

E. The introduction into an existing medical care facility of any new open heart surgery, psychiatric, medical rehabilitation, or substance abuse treatment service which the facility has never provided or has not provided in the previous 12 months.

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for which a verbatim record is made. See subsection A of § 5-4 or subsection B of § 6-6: subsection A of § 5.7.

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"Registration" means the recordation of the establishment of certain new or expansion of existing filing of information by the owner on affected new clinical health services, acquisition of certain established major medical equipment or initiation of certain capital expenditures as required by §§ 3.2 and 3.3. required with an expenditure or expenditure value of \$400,000 or more

on or after July 1, 1989, in a format prescribed by the Commissioner to satisfy the requirements of these regulations. For purposes of registration, affected clinical health services and major medical equipment shall include only the following:

- (1) radiation therapy;
- (2) cardiac catheterization;
- (3) obstetrical;
- (4) neonatal special care unit;
- (5) lithotripsy;
- (6) magnetic resonance imaging;
- (7) positron emission tomography (PET) scanning;
- (8) computed tomography (CT) scanning;
- (9) heart, lung and kidney transplants;
- (10) other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the Commissioner.

"Schedule for completion" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

1. Changes the site;
2. Increases the capital expenditure amount approved for the project by 10% or more;
3. Changes the number or type of beds including the reclassification of beds from one medical care facility classification to another such as acute care to long term care except when such reclassification is allowable as provided for in these regulations. See definition of "medical care facility";
4. Changes the service(s) proposed to be offered;
5. Extends the schedule for completion of the project for more than a 12-month period of time beyond that originally approved by the Commissioner. beyond 3 years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See § 3-4 under Mandatory

Requirements §§ 6.2 and 6.3 .

"State health plan" means the document approved by the Virginia Health Planning Board which shall include, but not be limited to, analysis of priority health issues, policies, needs and methodologies for assessing statewide health care needs. The State Health Plan 1980-84 and all amendments thereto including all methodologies therein shall remain in force and effect until any such regulation is amended, modified or repealed by the Board of Health.

"State medical facilities plan" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. In developing the plan, the Board of Health shall take into consideration the policies and recommendations contained in the State Health Plan. The most recent applicable State Medical Facilities Plan shall remain in force until any such regulation is amended, modified or repealed by the Board of Health.

"Virginia Health Planning Board" means the statewide health planning body established pursuant to § 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

PART II. GENERAL INFORMATION.

§ 2.1. Authority for regulations.

The Virginia Medical Care Facilities Certificate of Public Need Law, which is codified as §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia, requires the owners or sponsors of medical care facility projects to secure a certificate of public need from the State Health Commissioner prior to initiating such projects. Sections 32.1-102.2 and 32.1-12 of the Code of Virginia direct the Board of Health to promulgate and prescribe such rules and regulations as are deemed necessary to effectuate the purposes of this statute.

§ 2.2. Purpose of rules and regulations.

The board has promulgated these rules and regulations to set forth an orderly administrative process for making public need decisions.

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the following:

A. State Board of Health.

The Board of Health is the governing body of the State Department of Health. The Board of Health has the authority to promulgate and prescribe such rules and regulations as it deems necessary to effectuate the purposes of the Act.

B. State Health Commissioner.

The State Health Commissioner is the executive officer of the State Department of Health. The commissioner is the designated decision maker in the process of determining public need under the Act.

§ 2.4. Public meetings and public hearings.

All meetings and hearings convened to consider any certificate of public need application shall be open to the public in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of the Code of Virginia.

§ 2.5. Official records.

Written information including staff evaluations and reports and correspondence developed or utilized or received by the commissioner during the review of a medical care facility project shall become part of the official project record maintained by the Department of Health and shall be made available to the applicant, competing applicant and review bodies. Other persons may obtain a copy of the project record upon request. All records are subject to the Virginia Freedom of Information Act.

Exclusions. Information submitted to the commissioner to comply with registration requirements set forth in §§ 3.2 and 3.3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act until such time as the registered service or equipment becomes operational.

§ 2.6. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act (§ 9-6.14.1, et seq.) of the Code of Virginia apply to their promulgation.

§ 2.7. Effective date of rules and regulations.

These rules and regulations shall become effective ~~December 6, 1990~~ July 1, 1992 .

§ 2.8. Powers and procedures of regulations not exclusive.

The commissioner and the board reserve the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provisions set forth herein and the provisions of § 32.1-102.1 et seq. of the Code of Virginia.

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§ 2.9. Annual report.

The department shall prepare and shall distribute upon request an annual report on all certificate of public need applications considered by the State Health Commissioner. Such report shall include a general statement of the findings made in the course of each review, the status of applications for which there is a pending determination, an analysis of the consistency of the decisions with the recommendation made by the regional health planning agency and an analysis of the costs of authorized projects.

PART III. MANDATORY REQUIREMENTS.

§ 3.1. Requirements for reviewable medical care facility projects.

Prior to initiating a reviewable medical care facility project the owner or sponsor shall obtain a certificate of public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in § 3.2 § 3.7 of these regulations shall be met.

§ 3.2. Requirements for registration of affected clinical health services and major medical equipment.

~~Within 30 days following operation, the owner of a new clinical health service established or major medical equipment with an expenditure or expenditure value of \$400,000 or more acquired on or after July 1, 1989, that is not defined as a project under these regulations and that has not been previously authorized by the State Health Commissioner prior to July 1, 1989, shall in writing register such service or equipment with the commissioner and copy the regional health planning agency.~~

At least 30 days prior to (i) establishing a new or expanding an existing clinical health service or (ii) the date of contractual obligation or other commitment to acquire any major medical equipment with an expenditure or expenditure value of \$400,000 or more which is not defined as a project under these regulations, and has not been previously authorized by the commissioner prior to July 1, 1989, the owner of any medical care facility listed in these regulations, physician's office, or specialized center or clinic shall register such services or acquisitions of equipment with the commissioner.

The format for registration shall be prescribed by the commissioner and shall include information concerning the owner and operator, description, site, capital, financing and lease costs, beginning date and hours of operation of clinical health service and major medical equipment. For purposes of registration, (i) owner shall include any person offering affected clinical health services and major medical equipment and (ii) affected clinical health services and major medical equipment shall include only the following:

- (1) radiation therapy;
- (2) cardiac catheterization;
- (3) obstetrical;
- (4) neonatal *special care unit* ;
- (5) lithotripsy;
- (6) magnetic resonance imaging;
- (7) positron emission tomography (PET) scanning;
- (8) computed tomography (CT) scanning;
- (9) heart, lung, and kidney , *other major internal organ or tissue* transplants
- (10) other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the commissioner.

The commissioner shall acknowledge *the* registration within 15 days of receipt.

§ 3.3. Requirements for registration of capital expenditures.

At least 30 days prior to making a capital expenditure of \$1,000,000 or more which is not defined as a project under these regulations and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in these regulations, physician's office, or specialized center or clinic, shall register in writing such expenditure with the commissioner. The format for registration shall be prescribed by the commissioner and shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure.

§ 3.4. Reporting requirements for registered services and equipment.

Owners of services and equipment registered in accordance with § 3.2 of these regulations shall report to the commissioner on a quarterly basis information concerning patient volumes, morbidity and mortality, aggregate costs and charges, and other information which is designated by the commissioner about the services provided. Data reports shall be provided on a format prescribed by the commissioner and shall cover the periods of July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30. Reports shall be submitted to the commissioner within 30 days following the last day of the quarter report period in which the registered service or equipment becomes operational and 30 days following the last day of every quarter report period thereafter.

§ 3.5. Penalties for noncompliance with registration and reporting requirements.

Any person willfully refusing, failing or neglecting to comply with registration or reporting requirements set forth in §§ 3.2, 3.3 and 3.4 of these regulations will be subject to a civil penalty of \$100 per violation per day from the date written notification is received from the department until the required registration or reporting forms are submitted to the department. Upon information and belief that a person has failed to comply with registration and reporting requirements in accordance with this provision, the department shall notify the person in writing, and 15 days shall be provided for a response in writing, including a plan for immediate correction. In the absence of adequate response or the necessary compliance or both, a judicial action shall be initiated in accordance with provisions of § 32.1-27 of the Code.

§ 3.6. Confidentiality of information.

Information provided to the department by persons to satisfy registration requirements set forth in §§ 3.2 and 3.3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in § 2.2-342 of the Code of Virginia until such time as the new or expanded clinical health service becomes operational. In accordance with this provision, the department shall not provide information it receives about registered services to any person until the new or expanded service becomes operational. Persons registering the new service or equipment or capital expenditure shall notify the department in writing of the date the service or equipment becomes operational or the expenditure is made and provide a copy of this notification to the appropriate regional health planning agency.

§ 3.7. Requirement for notification of proposed acquisition of medical care facilities.

At least 30 days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is \$700,000 or more, that person shall provide written notification to the commissioner and the regional health planning agency that serves the area in which the facility is located. Such notification shall identify the name of the medical care facility, the current and proposed owner, the cost of the acquisition, the services to be added or deleted, the number of beds to be added or deleted, and the projected impact that the cost of the acquisition will have upon the charges of the services to be provided in the medical care facility. The commissioner shall provide written notification to the person who plans to acquire the medical care facility within 30 days of receipt of the required notification. If the commissioner finds that a reviewable clinical health service or beds are to be added as a result of the acquisition, the commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If such certificate is required, an application will be considered under an appropriate review procedure which

will be identified at the time of written notification by the commissioner to the applicant for such acquisition.

§ 3.8. Significant change limitation.

No significant change in a project for which a certificate of public need has been issued shall be made without prior written approval of the commissioner. Such request for a significant change shall be made in writing by the owner to the commissioner with a copy to the appropriate regional health planning agency. The owner shall also submit the application fee to the department if applicable at the time the written request is made. The written request shall identify the nature and purpose of the change. The regional health planning agency shall review the proposed change and notify the commissioner of its recommendation with respect to the change within 30 days from receipt of the request by both the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the 30-day period shall constitute a recommendation of approval. The commissioner shall act on the significant change request within 35 days of receipt. A public hearing during the review of a proposed significant change request is not required unless determined necessary by the commissioner. The commissioner shall not approve a significant change in cost for a project which exceeds the authorized capital expenditure by more than 20%. The commissioner shall not extend the schedule for completion of a project beyond three years from the date of issuance of the certificate or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater, except when delays in completion of a project have been caused by events beyond the control of the owner and the owner has made substantial and continuing progress toward completion of the project.

§ 3.9. Requirements for health maintenance organizations.

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisition of medical care facilities if appropriate. See definition of "project" and § 3.7.

**PART IV.
DETERMINATION OF PUBLIC NEED (REQUIRED
CONSIDERATIONS).**

§ 4.1. In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

A. The recommendation and the reasons therefor of the appropriate regional health planning agency.

B. The relationship of the project to the applicable health plans of the regional health planning agency, and the Virginia Health Planning Board and the Board of Health.

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C. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

D. The need that the population served or to be served by the project has for the project.

E. The extent to which the project will be accessible to all residents of the area proposed to be served.

F. The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which the project is proposed.

G. Less costly or more effective alternate methods of reasonably meeting identified health service needs.

H. The immediate and long-term financial feasibility of the project.

I. The relationship of the project to the existing health care system of the area in which the project is proposed.

J. The availability of resources for the project.

K. The organizational relationship of the project to necessary ancillary and support services.

L. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.

M. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.

N. The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

O. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other maintenance organizations in a reasonable and cost effective manner.

P. The special needs and circumstances for biomedical and behavioral research projects which are designed to

meet a national need and for which local conditions offer special advantages.

Q. The costs and benefits of the construction associated with the proposed project.

R. The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

S. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

T. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed.

PART VI V. STANDARD REVIEW PROCESS.

§ 6.1: § 5.2. Preconsultation.

Each regional health planning agency and the department shall provide upon request advice and assistance concerning community health resources needs to potential applicants. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the regional health planning agency or the commissioner.

§ 6.2: § 5.2. Application forms.

A. Obtaining application forms.

~~Application forms shall be available from the commissioner upon written request by the applicant. The request Letter of intent.~~

At least 30 days prior to submission of an application, an applicant shall file a letter of intent with the commissioner to request appropriate application forms. The letter shall identify the owner, the type of project for which forms are an application is requested, and the proposed scope (size) and location of the proposed project. Such letter must be directed to the commissioner prior to the submission of the application. A copy of the request should letter shall also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within 15 7 days of the receipt of request the letter of intent.

B. Application fees.

The department shall collect application fees for applications submitted requesting a certificate of public need. The fee required for an application is the lesser of 0.5% of the proposed capital expenditure for the project

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or \$5,000. No application will be deemed to be complete for review until the required application fee is paid.

B. C. Filing application forms.

Applications must be submitted at least 40 days prior to the first day of a scheduled review cycle to be considered for review in the same cycle. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency, and the application fee has been paid to the department. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

§ 6-3: § 5.3. Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions on the application must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable and the application fee submitted. Additional information required to complete an application should shall be submitted to the department and the appropriate regional health planning agency five days prior to the beginning of a review cycle in order to ensure review in the same review cycle. The review cycle for completed applications begins on the 10th day of each month or in the event that the 10th day falls on the weekend, the next work day. See subsection A of § 6-6.

first day of a review cycle to be considered complete for review in the same review cycle. In the event that the first day of a review cycle falls on the weekend, the review of the completed application will begin on the next work day.

§ 6-4: § 5.4. One hundred twenty-day review cycle.

The review of a completed application for a certificate of public need shall be accomplished within 120 days of the beginning of the review cycle. See subsection A of § 6-6.

The department shall review the following groups of completed applications in accordance with the following 120 day scheduled review cycles and the following descriptions of projects within each group, except as provided for in § 5.6.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospital Beds/	Jan 10	May 9
	Ambulatory Surgery Centers	Jul 10	Nov 6

B	Psychiatric Facility Beds/ Services	Mar 10	Jul 7
		Sep 10	Jan 7
C	Medical Rehabilitation Beds/ Services	May 10	Sep 6
		Nov 10	Mar 9
D	Open Heart Surgery Services	Jan 10	May 9
		Jul 10	Nov 6
E	Substance Abuse Treatment Beds/Services	Mar 10	Jul 7
		Sep 10	Jan 7
F	Nursing Home Beds/Services	Planning Districts 6, 11 & 22	
		Jan 10	May 9
		Planning Districts 1, 9, 13 & 20	
		Mar 10	Jul 7
		Planning Districts 3, 8, 14 & 16	
		May 10	Sep 6
Planning Districts 5, 17, 18 & 19			
Jul 10	Nov 6		
Planning Districts 2, 10 & 15			
Sep 10	Jan 7		
Planning Districts 4, 7, 12 & 21			
Nov 10	Mar 9		

Batch Group A includes:

1. The establishment of a new general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation of 10 general hospital beds or 10% of the general hospital beds of a general hospital, whichever is less, from one existing physical facility to any other in any two year period.
4. The establishment of a new ambulatory surgery center.

Batch Group B includes:

1. The establishment of a new mental hospital or psychiatric hospital.
2. An increase in the total number of beds in an existing or authorized mental hospital or psychiatric hospital.
3. An increase in the total number of mental hospital or psychiatric hospital beds in an existing or authorized medical care facility which is not a dedicated mental hospital or psychiatric hospital which increases the total number of beds in the existing or authorized medical care facility.
4. The relocation of 10 mental hospital or psychiatric hospital beds or 10% of the mental hospital or psychiatric hospital beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.
5. The introduction into an existing medical care facility of any new psychiatric service which the facility has never provided or has not provided in the previous 12 months.

Batch Group C includes:

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1. The establishment of a new medical rehabilitation hospital.

2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.

3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility which is not a dedicated medical rehabilitation hospital which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new medical rehabilitation service which the facility has never provided or has not provided in the previous 12 months.

Batch Group D includes:

The introduction into an existing medical care facility of any new open heart surgery service which the facility has never provided or has not provided in the previous 12 months.

Batch Group E includes:

1. The establishment of an intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

2. An increase in the total number of beds in an existing or authorized intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

3. An increase in the total number of substance abuse treatment beds in an existing or authorized medical care facility which is not a dedicated intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 substance abuse treatment beds or 10% of the substance abuse treatment beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new substance abuse treatment service which the facility has never provided or has not

provided in the previous 12 months.

Batch Group F includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility.

2. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility.

3. An increase in the total number of nursing home beds, intermediate care facility beds, or extended care facility beds in an existing or authorized medical care facility which is not a dedicated nursing home, intermediate care facility, or extended care facility which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period.

5. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-123 of the Code.

§ 5.5. Requests for application (RFA).

The commissioner may request the submission of applications for his consideration which address a specific need for services and facilities as identified in the State Medical Facilities Plan. The department shall give notice of such RFA in a newspaper of general circulation in the locality or the planning district where the specific services or facility is requested. Such notice shall be published at least 120 days prior to the first day of the appropriate review cycle for the type of project being requested. A written copy of an RFA shall also be available upon request from the department and the regional health planning agency in the appropriate geographic area. The process for adoption of an RFA by the commissioner shall be set forth in the State Medical Facilities Plan.

§ 6.5. § 5.6. Consideration of applications.

All competing applications shall be considered at the same time by the regional health planning agency and the commissioner. Applications for the same or similar services which are proposed for the same planning district or medical service area shall be considered as competing applications by the commissioner. The commissioner shall determine if an application is competing and shall provide written notification to the competing applicants and appropriate the regional health planning agency. The

commissioner may, upon the request of an applicant, waive the review schedule requirements of § 5.4 in the case of a documented emergency.

§ 6.6. § 5.7. Review of complete application.

A. Review cycle.

At the close of the work day on the 10th day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications including a proposed date for any informal fact-finding conference that may be held. The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant(s) and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference.

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall file, no later than seven days prior to the conference, written notification to the commissioner, applicant(s) and other competing applicants, and regional health planning agency stating the grounds for good cause.

For purposes of this section, "good cause" shall mean that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia.

The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.

B. Regional health planning agency required notifications.

Upon notification of the acceptance date of a complete application as set forth in subsection A of § 6.6 of these

regulations, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in these rules and regulations, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one year time period following the final decision on a certificate of public need application. See definition of "public hearing."

C. Ex parte contact.

After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

§ 6.7. § 5.8. Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate regional health planning agency and the commissioner for consideration prior to their final action.

§ 6.8. § 5.9. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part VI V of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with § 3-4 § 3.8 of the regulations.

§ 6.9. § 5.10. Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice by written notification to the commissioner.

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§ 6.10. § 5.11. Action on an application.

A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan and the or State Medical Facilities Plan ; provided, . However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

Conditions of approval. The commissioner may condition the approval of an application for a project on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents or to provide care to persons with special needs. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreement shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department shall notify the person in writing and 15 days shall be provided for response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code.

B. Notification process-extension of review time.

The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycles unless an extension is agreed to by the applicant and an informal fact-finding conference described in § 6.6 is held. When an informal fact-finding conference is held, the 120 day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant.

PART VII VI .

DURATION/EXTENSION/REVOCAION OF CERTIFICATES.

§ 7.1. § 6.1. Duration.

A certificate of public need shall be valid for a period of 12 months and shall not be transferrable from the certificate holder to any other legal entity regardless of the relationship, under any circumstances.

§ 7.2. § 6.2. Extension.

A certificate of public need is valid for a 12-month period and may be extended by the commissioner for additional time periods which shall be specified at the time of the extension.

A. Basis for certificate extension within 24 months.

An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in § 7.3 § 6.3 of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate or period of extension.

B. Basis for certificate extension beyond 24 months.

An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) any delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the owner; and (iii) a revised schedule of completion has been provided and determined to be reasonable. Such request shall be submitted in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate of period of extension. *The commissioner shall not grant an extension to the schedule for completion of a project beyond three years (36 months) of the date of certificate issuance or beyond the time period approved at the date of certificate issuance, whichever is greater, unless such extension is authorized in accordance with the provisions for a significant change. (See § 3.8. Significant change limitation.)*

C. Basis for indefinite extension.

A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in subsection C of § 7.3 and the definition of "Construction, initiation of." § 6.3.

D. Regional health planning agency review.

All requests for an extension of a certificate of public need shall be reviewed by the appropriate regional health planning agency within 30 days of receipt by the department and the regional health planning agency. The recommendations on the request by that agency shall be forwarded to the commissioner who shall act upon the progress report within 35 days of receipt by the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the time frame prescribed shall constitute a recommendation of approval by such regional health planning agency.

E. Notification of decision.

Extension of a certificate of public need by the commissioner shall be made in the form of a letter from the commissioner with a copy to the appropriate regional health planning agency and shall become part of the official project file.

§ 7-2, § 6.3. Demonstration of progress.

The applicant shall provide reports to demonstrate progress made towards the implementation of an authorized project in accordance with the schedule of development which shall be included in the application. Such progress reports shall be filed in accordance with the following intervals and contain such evidence as prescribed at each interval:

A. Twelve months following issuance. Documentation that shows: (i) proof of ownership or control of site; (ii) the site meets all zoning and land use requirements; (iii) architectural planning has been initiated; (iv) preliminary architectural drawings and working drawings have been submitted to appropriate state reviewing agencies and the State Fire Marshal; (v) construction financing has been completed or will be completed within two months and (vi) purchase orders of lease agreements exist for equipment and new service projects.

B. Twenty-four months following issuance. Documentation that shows that (i) all required financing is completed; (ii) preconstruction site work has been initiated; (iii) construction bids have been advertised and the construction contractor has been selected; (iv) the construction contract has been awarded and (v) construction has been initiated.

C. Upon completion of a project. Any documentation not previously provided which: (i) shows the final costs of the project, including the method(s) of financing; and (ii) shows that the project has been completed as proposed in accordance with the application originally submitted, including any subsequent approved changes. (See "completion" in § 1.1.)

§ 7-4, § 6.4. Revocation of certificate.

A. Lack of progress.

Failure of any project to meet the progress requirements stated in § 7-2 § 6.3 shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in § 7-2 § 6.3.

B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § 7-2 § 6.3 of these regulations shall be cause for revocation, unless, due to extenuating circumstances, the commissioner, in his sole discretion, extends the certificate, in accordance with subsection B of § 7-2 § 6.2 of these regulations.

C. Unapproved changes.

Exceeding a capital expenditure amount not authorized by the commissioner or not consistent with the schedule of completion. See definition of "significant change" and "schedule of completion." See definition of significant change and schedule of completion.

D. Failure to initiate construction.

Failure to initiate construction of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with subsection B of § 7-2 § 6.2 of these regulations.

E. Misrepresentation.

Upon determination that an applicant has knowingly misrepresented or knowingly withheld relevant data or information prior to issuance of a certificate of public need, the commissioner may revoke said certificate.

F. Noncompliance with assurances.

Failure to comply with the assurances or intentions set forth in the application or written assurances provided at the time of issuance of a certificate of public need shall be cause for revocation.

PART VIII . APPEALS.

§ 8-1, § 7.1. Court review.

A. Appeal to circuit court. Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code of Virginia.

Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage

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to 5.0% or more of the patients in the applicant's service area, a regional health planning agency operating in the applicant's service area or any person showing good cause or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.

B. Designation of judge.

The judge of the court referred to in subsection A of § ~~8.1~~ § 7.1 of these regulations shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

C. Court review procedures.

Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

D. Further appeal.

Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken and as provided by law.

PART ~~IX~~ VIII . SANCTIONS.

§ ~~9.1~~ § 8.1. Violation of rules and regulations.

Commencing any project without a certificate required by this statute shall constitute grounds for refusing to issue a license for such project.

§ ~~9.2~~ § 8.2. Injunctive relief.

On petition of the commissioner, the Board of Health or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed,

undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

PART ~~IX~~ . OTHER.

§ ~~10.1~~ § 9.1. Certificate of public need moratorium.

Notwithstanding any law to the contrary, the Commissioner shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to the regulations for a medical care facility project which would increase the number of nursing home beds from the effective date of the regulations through ~~January 1, 1991~~ June 30, 1993 . However, the commissioner may approve or authorize the issuance of a certificate of public need for the following projects:

1. The renovation or replacement on site of a nursing home, intermediate care or extended care facility or any portion thereof or *replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven unfeasible* when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. *Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing home.*

2. The conversion on site of existing licensed beds of a medical care facility other than a nursing home, extended care, or intermediate care facility to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of 20 beds or 10% of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve as specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.

3. *The conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the less of 30 beds or 25% of the beds in the home for adults facility; (ii) the home for adults facility has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured*

patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the home for adults facility further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed home for adults facility otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health.

4. Any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by a continuing care provider registered as of January 15, 1991, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of this Code, if (i) the total number of new or additional nursing home beds does not exceed 32 when the beds are to be added by new construction, or 25 when the beds are to be added by conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of January 15, 1991, and (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meets the requirements of § 38.1-4905. No application for a certificate of public need for the creation or addition of nursing home beds pursuant to this section shall be accepted from a provider who, as of January 15, 1991, had an existing complement of beds, unless such provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United State Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing home beds for a provider who has an existing complement of such beds, admissions to such beds shall, thereafter, be restricted to persons who have entered into continuing care contracts meeting the requirements of § 38.2-4905.

5. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.2 et seq.) of Chapter 4 of Title 32.1, of the Code, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.

~~§ 10-2:~~ § 9.2. Expiration of requirements for general hospitals and outpatient or ambulatory surgery centers or clinics.

Notwithstanding any law to the contrary, as of July 1, ~~1991~~ 1993, general hospitals and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery shall no longer be medical care

facilities subject to review pursuant to these Regulations except with respect to the establishment of nursing home beds in general hospitals.

§ 9.3. Notwithstanding the authority of the commissioner to grant an extension of a schedule for completion of the project pursuant to Part VI of these regulations, no extension shall be granted beyond June 30, 1992 for any nursing home project approved prior to January 1, 1991. However, the commissioner may grant an extension of a schedule for completion for an additional six months upon determining that (i) substantial and continuing progress has been made toward completion of the project; and (ii) the project owner had agreed in writing prior to February 13, 1991 to delay the project to facilitate cost savings for the Commonwealth. The certificate for any such nursing home bed project approved prior to January 1, 1991, which has not been completed by June 30, 1992, or by the expiration date of any approved extension shall be revoked.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Title of Regulation: VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.

Statutory Authority: §§ 9-158, 9-160 and 9-164 of the Code of Virginia.

Public Hearing Date: N/A - Written comments may be submitted until March 15, 1992.

(See Calendar of Events section for additional information)

Summary:

The proposed amendments (i) waive requirement for submission of a certified audited financial statement when an extenuating circumstance exists; (ii) require the filing of an institution's historical and its certified audited financial statement prior to acceptance by council of the filing of a subsequent year's budget or the filing of any request for an interim rate increase; and (iii) require each individual licensed health care institution to submit filings, however, the screening process would still be applied to allow for hospitals systems to be analyzed systemwide.

VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning:

"Adjusted patient days" means inpatient days divided by

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the percentage of inpatient revenues to total patient revenues.

"Aggregate cost" means the total financial requirements of an institution which shall be equal to the sum of:

1. The institution's reasonable current operating costs, including reasonable expenses for operating and maintenance of approved services and facilities, reasonable direct and indirect expenses for patient care services, working capital needs and taxes, if any;

2. Financial requirements for allowable capital purposes, including price level depreciation for depreciable assets and reasonable accumulation of funds for approved capital projects;

3. For investor-owned institutions, after tax return on equity at the percentage equal to two times the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for the months in a provider's reporting period, but not less, after taxes, than the rate or weighted average of rates of interest borne by the individual institution's outstanding capital indebtedness. The base to which the rate of return determined shall be applied is the total net assets, adjusted by paragraph 2 of this section, without deduction of outstanding capital indebtedness of the individual institution for assets required in providing institutional health care services;

4. For investor-owned institutions organized as proprietorships, partnerships, or S-corporations an imputed income tax, for fiscal years ending July 1, 1989, or later, at a combined federal and state income tax rate equal to the maximum tax rates for federal and state income taxes. The combined rate for 1989 is equal to 34% for individuals and 40% for corporations. Such tax computation shall be exclusive of net operating loss carryforwards prior to July 1, 1989. Operating losses incurred after July 1, 1989, may be carried forward no more than five years but may not be carried back prior years. The schedule of imputed income taxes shall be reported as a note to the financial statements or as a supplemental schedule of the certified audited financial statements submitted to the Virginia Health Services Cost Review Council by the institution.

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Council" means the Virginia Health Services Cost Review Council.

"Consumer" means any person (i) whose occupation is

other than the administration of health activities or the provision of health services (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care institution" means (i) a general hospital, ordinary hospital, or outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 and (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University. In no event shall such term be construed to include any physician's office, nursing care facility of a religious body which depends upon prayer alone for healing, independent laboratory or outpatient clinic.

"Hospital" means any facility licensed pursuant to §§ 32.1-123, et seq. or 37.1-179 et seq. of the Code of Virginia.

"Late charge" means a fee that is assessed a health care institution that files its budget, annual report, or charge schedule with the council past the due date.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Voluntary cost review organization" means a nonprofit association or other nonprofit entity which has as its function the review of health care institutions' costs and charges but which does not provide reimbursement to any health care institution or participate in the administration of any review process under Chapter 4 of Title 32.1 of the Code of Virginia.

"Patient day" means a unit of measure denoting lodging facilities provided and services rendered to one inpatient, between census-taking-hour on two successive days. The day of admission but not the day of discharge or death is counted a patient day. If both admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one patient day. For purposes of filing fees to the council, newborn patient days would be added. For a medical facility, such as an ambulatory surgery center, which does not provide inpatient services, each patient undergoing surgery during any one 24-hour period will be the equivalent to one patient day.

PART II. GENERAL INFORMATION.

§ 2.1. Authority for regulations.

The Virginia Health Services Cost Review Council, created by §§ 9-156 through 9-166 of the Code of Virginia, is required to collect, analyze and make public certain financial data and findings relating to hospitals which operate within the Commonwealth of Virginia. Section 9-164 of the Code of Virginia directs the council from time to time to make such rules and regulations as may be necessary to carry out its responsibilities as prescribed in the Code of Virginia.

§ 2.2. Purpose of rules and regulations.

The council has promulgated these rules and regulations to set forth an orderly administrative process by which the council may govern its own affairs and require compliance with the provisions of §§ 9-156 through 9-166 of the Code of Virginia.

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the Virginia Health Services Cost Review Council.

§ 2.4. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act, codified as § 9-6.14:1, et seq. of the Code of Virginia applied to their promulgation.

§ 2.5. Effective date of rules and regulations.

These rules and regulations or any subsequent amendment, modification, or deletion in connection with these rules and regulations shall become effective 30 days after the final regulation is published in the Virginia Register.

§ 2.6. Powers and procedures of regulations not exclusive.

The council reserves the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provision set forth herein and the provisions of § 9-156 et seq. of the Code of Virginia.

PART III. COUNCIL PURPOSE AND ORGANIZATION.

§ 3.1. Statement of mission.

The council is charged with the responsibility to promote the economic delivery of high quality and effective institutional health care services to the people of the Commonwealth and to create an assurance that the charges are reasonably related to costs.

The council recognizes that health care institutional costs are of vital concern to the people of the Commonwealth and that it is essential for an effective cost monitoring program to be established which will assist health care institutions in controlling their costs while assuring their financial viability. In pursuance of this policy, it is the council's purpose to provide for uniform measures on a statewide basis to assist in monitoring the costs of health care institution's without sacrifice of quality of health care services and to analyze the same to determine if charges and costs are reasonable.

§ 3.2. Council chairman.

The council shall annually elect one of its consumer members to serve as chairman. The chairman shall preside at all meetings of the council and shall be responsible for convening the council.

§ 3.3. Vice-chairman.

The council shall annually elect from its membership a vice-chairman who shall assume the duties of the chairman in his absence or temporary inability to serve.

§ 3.4. Expense reimbursement.

Members of the council shall be entitled to be reimbursed in accordance with state regulations for necessary and proper expenses incurred in the performance of their duties on behalf of the council.

§ 3.5. Additional powers and duties.

The council shall exercise such additional powers and duties as may be specified in the Code of Virginia.

PART IV. VOLUNTARY COST REVIEW ORGANIZATIONS.

§ 4.1. Application.

Any organization desiring approval as a voluntary rate review organization may apply for approval by using the following procedure:

1. Open application period. A voluntary cost review organization may apply for designation as an approved voluntary cost review organization to be granted such duties as are prescribed in § 9-162 of the Code of Virginia.

2. Contents of application. An application for approval shall include:

- a. Documentation sufficient to show that the applicant complies with the requirements to be a voluntary cost review organization, including evidence of its nonprofit status. Full financial reports for the one year preceding its application must also be forwarded. If no financial reports are

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available, a statement of the projected cost of the applicant's operation with supporting data must be forwarded;

b. If any of the organization's directors or officers have or would have a potential conflict of interests affecting the development of an effective cost monitoring program for the council, statements must be submitted with the application to fully detail the extent of the other conflicting interest;

c. A detailed statement of the type of reports and administrative procedures proposed for use by the applicant;

d. A statement of the number of employees of the applicant including details of their classification; and

e. Any additional statements or information which is necessary to ensure that the proposed reporting and review procedures of the applicant are satisfactory to the council.

§ 4.2. Review of application.

A. Designation.

Within 45 calendar days of the receipt of an application for designation as a voluntary cost review organization, the council shall issue its decision of approval or disapproval. Approval by the council shall take effect immediately.

B. Disapproval.

The council may disapprove any application for the reason that the applicant has failed to comply with application requirements, or that the applicant fails to meet the definition of a cost review organization, or fails to meet the specifications cited in paragraph A above concerning application contents or that the cost and quality of the institutional reporting system proposed by the applicant are unsatisfactory.

C. Reapplication.

An organization whose application has been disapproved by the council may submit a new or amended application to the council within 15 calendar days after disapproval of the initial application. An organization may only reapply for approval on one occasion during any consecutive 12-month period.

§ 4.3. Annual review of applicant.

A. By March 31 of each year, any approved voluntary cost review organization for the calendar year then in progress which desires to continue its designation shall submit an annual review statement of its reporting and review procedures.

B. The annual review statement shall include:

1. Attestation by the applicant that no amendments or modifications of practice contrary to the initially approved application have occurred; or

2. Details of any amendments or modifications to the initially approved application, which shall include justifications for these amendments or modifications.

C. The council may require additional information from the applicant supporting that the applicant's reports and procedures are satisfactory to the council.

§ 4.4. Revocation of approval.

The council may revoke its approval of any cost review organization's approval when the review procedures of that organization are no longer satisfactory to the council or for the reason that the voluntary cost review organization could be disapproved under § 4.2.B of these regulations.

§ 4.5. Confidentiality.

A voluntary cost review organization approved as such by the council shall maintain the total confidentiality of all filings made with it required by these regulations or law. The contents of filings or reports summaries and recommendations generated in consequence of the council's regulations may be disseminated only to members of the council, the council's staff and the individual health care institution which has made the filings or which is the subject of a particular report.

PART V. CONTRACT WITH VOLUNTARY COST REVIEW ORGANIZATION.

§ 5.1. Purpose.

It is the intention of the council to exercise the authority and directive of § 9-163 of the Code of Virginia whereby the council is required to contract with any voluntary cost review organization for services necessary to carry out the council's activities where this will promote economy and efficiency, avoid duplication of effort, and make best use of available expertise.

§ 5.2. Eligibility.

In order for a voluntary cost review organization to be eligible to contract with the council, it shall have met all other requirements of §§ 4.1 and 4.5 of these regulations relating to voluntary cost review organization and have been approved as such an organization.

§ 5.3. Contents of contract.

The written agreement between the council and any voluntary cost review organization shall contain such provisions which are not inconsistent with these regulations or law as may be agreed to by the parties. Any such contract shall be for a period not to exceed five years.

PART VI. FILING REQUIREMENTS AND FEE STRUCTURE.

§ 6.1. Each *individual* health care institution shall file an annual report of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 of the Code of Virginia on forms provided by the council together with the certified audited financial statements (or equivalents) as prescribed in § 9-159 of the Code of Virginia ; which . *The annual report and the certified audited financial statement shall be received by the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. Extensions of filing times for the annual report or the certified audited financial statement may be granted for extenuating circumstances upon a health care institution's written application for a 30-day extension. Such request for extension shall be filed no later than 120 days after the end of a health care institution's fiscal year. The requirement for the filing of an annual report and a certified audited financial statement may be waived if a health care institution can show that an extenuating circumstance exists. Examples of an extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, or the institution is a new facility that has recently opened.*

Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the annual report filed with the council. The cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for findings submitted to the council.

§ 6.2. Each *individual* health care institution shall file annually a projection (budget) of annual revenues and expenditures as prescribed in § 9-161 B of the Code of Virginia on forms provided by the council. The institution's projection (budget) shall be received by the council no later than 60 days before the beginning of its respective applicable fiscal year. *An institution's budget for a given fiscal year will not be accepted for review unless the institution has already filed its annual report and certified audited financial statement for the previous fiscal year.* This regulation shall be applicable to nursing homes or certified nursing facilities for each fiscal year starting on or after June 30, 1990. Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the budget filed with the council. The cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare

for cost reports submitted to it shall be utilized for findings submitted to the council.

§ 6.3. Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in § 9-161 D of the Code of Virginia. The institution's schedule of charges shall be received by the council within 10 days after the beginning of its respective applicable fiscal year or within 15 days of being notified by the council of its approval of the charges, whichever is later.

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed at least 60 days in advance of its effective date, together with supporting data justifying the need for the amendment. *An institution's proposed amendment or modification to its annually filed schedule of charges shall not be accepted for review unless the institution has complied with all prior filing requirements contained in §§ 6.1 and 6.2 for previous fiscal years.* Changes in charges which will have a minimal impact on revenues are exempt from this requirement.

§ 6.3.1. Each health care institution shall file annually a survey of rates charged. For hospitals, the survey shall consist of up to 30 select charges, including semi-private and private room rates. The survey shall also consist of charges of the most frequently occurring diagnoses or procedures for inpatient and outpatient treatment. The charges shall be calculated by taking an average for one month of all patient bills where the requested CPT or ICD-9 code numbers are indicated as the principal diagnosis or procedure. This information shall be received by the council from each hospital no later than April 30 of each year.

The annual charge survey for nursing homes shall include up to 30 select charges, including semi-private and private room rates. The select charges shall reflect the rates in effect as of the first day of a sample month to be chosen by the council. This information shall be provided to the council no later than March 31 of each year.

§ 6.3.2. Each hospital or any corporation that controls a hospital shall respond to a survey conducted by the council to determine the extent of commercial diversification by such hospitals in the Commonwealth. The survey shall be in a form and manner prescribed by the council and shall request the information specified in subdivision a, f, g, h and i below on each hospital or such corporation and, with respect to any tax-exempt hospital or controlling corporation thereof, the information specified in subdivision a through i below for each affiliate of such hospital or corporation, if any:

- a. The name and principal activity;
- b. The date of the affiliation;
- c. The nature of the affiliation;

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- d. The method by which each affiliate was acquired or created;
- e. The tax status of each affiliate and, if tax-exempt, its Internal Revenue tax exemption code number;
- f. The total assets;
- g. The total revenues;
- h. The net profit after taxes, or if not-for-profit, its excess revenues; and
- i. The net quality, or if not-for-profit, its fund balance.

§ 6.3.3. The information specified in § 6.3:2 shall relate to any legal controls that exist as of the 1st of July of each calendar year in which the survey is required to be submitted.

§ 6.3.4. Each hospital or any corporation that controls a hospital and that is required to respond to the survey specified in § 6.3:2 shall complete and return the survey to the council by the 31st day of August of each calendar year or 120 days after the hospital's fiscal year end, whichever is later, in which the survey is required to be submitted.

§ 6.3.5. Each hospital that reports to the council or any corporation which controls a hospital that reports to the council shall submit an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.

§ 6.4. All filings prescribed in § 6.1, § 6.2 and § 6.3:2 of these regulations will be made to the council for its transmittal to any approved voluntary cost review organization described in Part IV of these regulations.

§ 6.5. A filing fee based on an adjusted patient days rate shall be set by the council, based on the needs to meet annual council expenses. The fee shall be established and reviewed at least annually and reviewed for its sufficiency at least annually by the council. All fees shall be paid directly to the council. The filing fee shall be no more than 11 cents per adjusted patient day for each health care institution filing. Prior to the beginning of each new fiscal year, the council shall determine a filing fee for hospitals and a filing fee for nursing homes based upon the council's proportionate costs of operation for review of hospital and nursing home filings in the current fiscal year, as well as the anticipated costs for such review in the upcoming year.

§ 6.6. Fifty percent of the filing fee shall be paid to the council at the same time that the health care institution files its budget under the provisions of § 6.2 of these regulations. The balance of the filing fee shall be paid to

the council at the same time the health care institution files its annual report under the provisions of § 6.1 of these regulations. When the council grants the health care institution an extension, the balance of the filing fee shall be paid to the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. During the year of July 1, 1989, through June 30, 1990, each nursing home and certified nursing facility shall pay a fee of 7 cents per adjusted patient day when it files its annual report in order to comply with subdivisions A1 and A2 of § 9-159 of the Code of Virginia. Following June 30, 1990, all nursing homes and certified nursing facilities shall submit payment of the filing fees in the amount and manner as all other health care institutions.

§ 6.7. A late charge of \$10 per working day shall be paid to the council by a health care institution that files its budget or , annual report or *its certified audited financial statement* past the due date. *The late charge may be waived if a health care institution can show that an extenuating circumstance exists. Examples of extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.*

§ 6.8. A late charge of \$50 shall be paid to the council by the health care institution that files the charge schedule past the due date.

§ 6.9. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § 6.3:2 or file the audited consolidated financial statement required by § 6.3:5 or both.

§ 6.10. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § 6.3:1.

PART VII. WORK FLOW AND ANALYSIS.

§ 7.1. The annual report data filed by health care institutions as prescribed in § 6.1 of these regulations shall be analyzed as directed by the council. *Hospitals that are part of a hospital system will be analyzed on a systemwide basis.* Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations, may be published and disseminated as determined by the council. The health care institution which is the subject of any summary, report, recommendation or comment shall received a copy of same at least 10 days prior to the meeting at which the same is to be considered by the council.

§ 7.2. The annual schedule of charges and projections

(budget) of revenues and expenditures filed by health care institutions as prescribed in § 6.2 of these regulations shall be analyzed as directed by the council. *Hospitals that are part of a hospital chain may have their filings reviewed on a consolidated basis.* Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations will be published and disseminated by the council. Amendments or modifications to the annually filed schedule of charges shall be processed in a like manner and reviewed by the council no later than 50 days after receipt of properly filed amendments or modifications. Any health care institution which is the subject of summaries and findings of the council shall be given upon request an opportunity to be heard before the council.

PART VIII. PUBLICATION AND DISSEMINATION OF INFORMATION RELATED TO HEALTH CARE INSTITUTIONS.

§ 8.1. The staff findings and recommendations and related council decisions on individual health care institutions' annual historical data findings will be kept on file at the council office for public inspection. However, the detailed annual historical data filed by the individual health care institutions will be excluded from public inspection in accordance with § 9-159 E, of the Code of Virginia.

§ 8.2. Periodically, but at least annually, the council will publish the rates charged by each health care institution in Virginia for up to 30 of the most frequently used services in Virginia, including each institution's average semiprivate and private room rates. The data will be summarized by geographic area in Virginia, and will be kept on file at the council office for public inspection and made available to the news media. In addition, annual charge schedules and subsequent amendments to these schedules filed under the provisions of § 6.3 of these rules and regulations will be kept on file at the council office for public inspection. Staff findings and recommendations and related council decisions on changes to health care institutions' rates and charges will also be kept on file at the council office for public inspection and available to the news media.

§ 8.3. Periodically, but at least annually, the council will publish an annual report which will include, but not be limited to the following: cost per admission comparison, cost per patient day comparison, percentage increase in cost per patient day, budget and historical reports reviewed, interim rate changes, excess operating expenses, revenue reduction recommendations, operating profits and losses, deductions from revenue (contractuals, bad debts, and charity care) and hospital utilization.

§ 8.3:1. The council will also periodically publish and disseminate information which will allow consumers to compare costs and services of hospitals, nursing homes

and certified nursing facilities.

§ 8.4. The staff findings and recommendations and related council decisions on individual health care institutions' annual budget and related rate filings will be kept on file at the council office for public inspection. However, the detailed annual budget data filed by the individual health care institutions will be excluded from public inspection.

§ 8.5. The council may release historical financial and statistical data reported by health care institutions to state or federal commissions or agencies based on individual, specific requests, and the merit of such requests. Requests must list the purpose for which the requested data is to be used to permit the council to reach a valid decision on whether or not the data requested will fit the need and should, therefore, be made available. Under no circumstances will data be released which contains "personal information" as defined in § 2.1-379(2) of the Code of Virginia.

§ 8.6. The council shall not release prospective (budgeted) financial and statistical data reported by health care institutions to anyone, except for the staff findings and recommendations as provided for in § 8.4 of these regulations.

§ 8.7. No data, beyond that specified in §§ 8.1 through 8.4 of these regulations will be released to other nongovernmental organizations and entities, except that data deemed pertinent by the council in negotiations with third-party payors such as Blue Cross/Blue Shield, commercial insurers, etc. Such pertinent data may be released and used on an exception, as needed, basis.

§ 8.8. Except for data specified in §§ 8.1 through 8.4 of these regulations available to anyone, the council shall have a right to furnish data, or refuse to furnish data, based on merit of the request and ability to furnish data based on data and staff time availability. The council may levy a reasonable charge to cover costs incurred in furnishing any of the data described in this section of the rules and regulations.

NOTICE: The forms used in administering the Virginia Health Services Cost Review Council Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Virginia Health Services Cost Review Council, 805 East Broad Street, 9th Floor, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Historical Submission for Acute Care Facilities

Budget Submission for Acute Care Facilities

Historical Submission for Long Term Care Facilities

Budget Submission for Long Term Care Facilities

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Historical Submission for Outpatient Surgical Hospitals

Budget Submission for Outpatient Surgical Hospitals

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-25-01. Minimum Standards for Licensed Family Day Care Homes. **REPEALED.**

Title of Regulation: VR 615-25-01:1. Minimum Standards for Licensed Group Family Day Care Homes.

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

Public Hearing Dates:

January 21, 1992 - 5 p.m.

January 23, 1992 - 4 p.m.

(See Calendar of Events section for additional information)

Summary:

The proposed regulation, Minimum Standards for Licensed Group Family Day Care Homes, is developed to show major additions and revisions in the licensing standards caused by changes to the Code of Virginia relating to group family day care homes and deemed necessary to update licensing requirements which have not been significantly revised since 1979. The 1990 General Assembly amended the Code of Virginia to require the licensure of a group family day care home. The law changes the name and definition of a family day care home to that for a group family day care home. The licensing statute dictates maintaining the licensure threshold of no fewer than six children received for care and establishes that no more than 12 children may be received for care in group family day care home. The provider's own children who receive care in the home are included in the capacity on the license.

Regulations have been proposed in multiple topic areas which positively impact the overall care and protection provided to children in licensed group family day care homes. The areas addressed are:

1. Definitions
2. Legal base
3. Qualifications and requirements for family day care providers
4. Ratios of adults to children
5. Physical environment
6. Fire prevention and emergency procedures
7. Small appliances and kitchen equipment
8. Space and Equipment for Children
9. Program and services
10. Supervision
11. Diapering and toileting
12. Transportation
13. Behavior and Guidance

14. Nutrition and food services

15. Health requirements for family day care household members and care givers

16. Health requirements for children

17. Illness, injury and death

18. Medicines

19. Animals

20. Record keeping responsibilities

21. Parent involvement

VR 615-25-01:1. Minimum Standards for Licensed Group Family Day Care Homes.

PART I. GENERAL.

Article I. Definitions.

§ 1.1. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age groups":

"Infant" means children from birth to 16 months.

"Toddler" means children from 16 months up to two years.

"Preschooler" means children from two years up to the school age.

"School age" means children who are enrolled and attending kindergarten or a higher grade.

"Age appropriate" means suitable to the chronological age range and developmental characteristic of a specific group of children.

"Age of eligibility to attend public school" means five years old by September 30.

"Caregiver" means the provider, substitute provider or assistant.

"Child" means any individual under 18 years of age.

"Child(ren) receiving care" means any child 10 years of age or younger and any child over 10 years of age who is placed for care, protection and guidance and may be placed on a monetary remuneration basis.

"Commissioner" means the Commissioner of Social Services, also known as the Director of the Virginia Department of Social Services.

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"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

"Family day care home" means any private family home in which more than five children, except children related by blood and marriage to the person who maintains the home, are received for care, protection and guidance only a part of the 24-hour day, except (i) homes which accept children exclusively from local departments of welfare or social services, (ii) homes which have been approved by a licensed day care system or (iii) homes which accept up to 10 children, at least five of whom are of school age and are not in the home for longer than three hours immediately before and three hours immediately after school hours each day. (This definition is effective through June 30, 1992.)

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business/professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance and protection of children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered object references.

"Group family day care home" means any private family home in which no fewer than six and no more than 12 children are received for care, protection and guidance for monetary remuneration during only part of the day. Once a child who does not reside in the home is received for care in exchange for monetary remuneration, all children receiving care count in the size of the group. (This definition becomes effective July 1, 1992.)

"Group family day care home assistant" or "assistant" means an individual(s) who is at least 14 years old and helps the group family day care home provider in the care, protection, supervision and guidance of children in a private home.

"Group family day care home provider(s)" or "provider(s)" means a person at least 18 years of age who is issued the group family day care home license by the Department of Social Services and has primary responsibility in providing care, protection, supervision and guidance for children in a private family home.

"Group family day care home standards" means the Minimum Standards for Licensed Group Family Day Care

Homes regulations or family day care homes subject to licensure.

"Licensee" means the person(s) to whom the license is issued.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of a child enrolled or in the process of being enrolled in a group family day care home.

"Physician" means an individual licensed to practice medicine.

"Substitute provider" means a person at least 18 years of age designated by the group family day care home provider and approved by the department who is readily available to provide child care in the provider's home in the event the provider becomes ill or encounters an emergency.

Article 2. Legal Base.

§ 1.2. Section 63.1-196 of the Code of Virginia requires the licensure of a group family day care home. A group family day care home shall be licensed before it begins to provide day care and the license shall be posted in a conspicuous place at the licensed premises. A licensed group family day care home is one where no fewer than six and no more than 12 children are provided care at any one time.

§ 1.3. When 13 or more children are receiving care at any one time in a private home that is subject to licensure, the Minimum Standards for Licensed Child Care Centers shall apply.

§ 1.4. Group family day care home standards are designed solely as minimum requirements to be met and maintained by those who apply for a license to care for at least six but no more to 12 children in private family homes.

PART II. PERSONNEL.

Article 1. Qualification Requirements for Group Family Day Care Home Provider(s) and Assistant(s).

§ 2.1. Care givers shall be able to read, write, understand and carry out responsibilities and requirements from the Minimum Standards for Licensed Group Family Day Care Homes.

§ 2.2. Care givers shall have the following attributes:

1. An understanding of children and their problems together with an ability to relate to children with courtesy, respect, patience, and affection, and an

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understanding and respect for the child's family;

2. The ability to communicate effectively;

3. The ability to provide activities and experiences daily, which will enhance the total development of children; and

4. The ability to handle emergencies with dependability and good judgment and communicate effectively with emergency personnel.

§ 2.3. Care givers shall be responsible, wholesome, emotionally stable, of good character and reputation.

§ 2.4. No person convicted of a crime involving child abuse, child neglect or moral turpitude shall be a care giver.

§ 2.5. Providers and substitute providers shall obtain first aid certification within six months of licensure or employment and maintain a current first aid certificate from:

1. The American Red Cross; or

2. The National Safety Council; or

3. Be an RN or LPN with a current license from the Board of Nursing.

§ 2.6. In addition to first aid training, care givers shall obtain six hours of training annually in areas such as, but not limited to, child development, discipline, health and safety, art and music activities, nutrition, child abuse detection and prevention, and recognition of communicable diseases.

§ 2.7. Written documentation of annual training shall be maintained on file for two years. Written documentation shall include name of training session, date of session, name of organization or person(s) who sponsored the training.

Article 2.

Ratio of Adults to Children.

§ 2.8. The licensee shall ensure that the home not exceed the total licensed capacity of children receiving care at any one time.

§ 2.9. Staffing.

When applicable, an assistant shall be present in order to maintain the following adult-child ratio for children receiving care:

1. One adult to every four infants below two years of age, including those related to the licensee;

2. One adult to every six children from two years to

school age, including children who are related to the licensee; and

3. One adult to every 12 school age children including children who are related to the licensee;

To determine if an assistant is needed, use the following formula:

Number of children 0 - 2 years multiplied by 6 points

Number of children 2 years to school age multiplied by 3 points

Number of children school age multiplied by 2 points

Total points if only one provider shall not exceed 24. Total points for more than one provider including (any assistant) shall not exceed 48.

§ 2.10. The group family day care home shall comply with any limitations which may be placed by the Virginia Public Building Safety Code on the number of children for whom care may be offered.

§ 2.11. If the provider has responsibility for a person who requires additional care because of a mental or physical condition, the number of day care children for whom the home may be licensed may be reduced by at least one.

PART III.

HOUSEHOLD.

§ 3.1. All members of the family day care household including relatives, lodgers, care givers and employees, shall be responsible, wholesome, and emotionally stable persons of good character and reputation.

§ 3.2. All members of the family day care household including relatives, lodgers, care givers and employees shall not have been convicted of a crime involving child abuse, child neglect or moral turpitude and shall have a criminal record clearance.

§ 3.3. All members of the group family day care household 14 years old and older including relatives, lodgers, care givers and employees shall have a Child Protective Services Central Registry check.

§ 3.4. Smoking shall not be permitted inside the home while children are in care.

PART IV.

PHYSICAL ENVIRONMENT AND EQUIPMENT.

Article 1.

Physical Environment.

§ 4.1. The physical facilities and furnishings of the home

and grounds shall be clean and shall not present hazards to the health and safety of children.

§ 4.2. The home shall be properly ventilated, dry and heated in winter.

A. When windows and doors are used for ventilation, they shall be properly screened.

B. Winter temperatures of at least 68°F shall be maintained in all rooms used by children.

§ 4.3. All rooms used for care shall be well lighted.

§ 4.4. Fire arms, ammunition and other similar hazardous materials and objects shall be stored safely in areas inaccessible to children and in a locked space with keys out of reach of children.

§ 4.5. Protective barrier(s) including but not limited to safety gates shall be placed on stairways that are accessible to children. Gates used shall have straight top edges and rigid mesh screens. Space between openings shall be no more than 1-1/2 inches in width.

§ 4.6. All interior and exterior stairways used by children with over three risers shall have handrails within the normal grasp of the children or a banister with vertical posts between the handrail and each step, which can be safely grasped by the children. The distance between the posts shall be no greater than 3-1/2 inches.

§ 4.7. Clear glass doors shall be clearly marked at the child's level to prevent accidents.

§ 4.8. The home shall be kept free from rodents and insect infestation.

§ 4.9. There shall be bathing and toilet facilities easily accessible to the children. Either paper towels or individually assigned cloth towels shall be provided. If cloth towels are used, they shall be laundered when soiled and at least once a week.

§ 4.10. Entrance and exit ways shall be unobstructed and well lighted.

§ 4.11. Protective receptacle covers or safety receptacles shall be placed in or over all electrical outlets not in use and accessible to the children. Protective coverings shall be large enough to prevent swallowing.

§ 4.12. Cleaning agents and plastic bags shall be stored in areas inaccessible to children or in a locked area with keys out of reach of children.

§ 4.13. The water supply and septic system shall be approved by the local health official, except where water is obtained from a municipal supply and the house is connected to a municipal sewer line.

Article 2.

Fire Prevention and Emergency Procedures.

§ 4.14. Frayed cords and exposed wires shall not be used. Electrical cords shall not be placed under carpets or stapled down to keep in place.

§ 4.15. If there are fire hazards, the appropriate fire prevention official(s) may be contacted by the department's representative. The provider shall comply with requirements or the recommendations made by the fire prevention official(s).

§ 4.16. All flammable and combustible materials, including but not limited to matches, lighters, cleaning agents, aerosol cans and alcohol shall be stored safely in an area inaccessible to children or stored in a locked area out of reach of children.

§ 4.17. All alternate heating devices (oil and wood burning stoves) and associated chimneys shall be inspected annually and cleaned as needed.

§ 4.18. Radiators, oil and wood burning stoves, floor furnaces and similar hazards shall have barriers or screens to prevent children from being burned.

§ 4.19. Portable liquid fuel burning heating appliances and open fire places shall not be used when children are in care.

§ 4.20. An operable 2A10BC rated fire extinguisher shall be provided near the kitchen area.

§ 4.21. An operable smoke detector(s) recommended by a nationally recognized laboratory shall be placed on each level of the home.

§ 4.22. There shall be written posted procedures related to fire and severe weather which shall be taught to and practiced with children in care on a monthly basis.

§ 4.23. Documentation of practiced procedures shall include date of event, number of children involved, ages of children, and approximate evacuation time. Records of monthly practiced procedures shall be maintained until the license is renewed.

§ 4.24. The home shall have a working telephone, other than a pay phone. If the telephone number is unlisted, providers shall ensure that parents and the department have the unlisted number. When changes of telephone numbers occur, providers shall inform the department within 48 hours and parents within 24 hours of the new telephone number.

§ 4.25. The following telephone numbers shall be posted in a visible area close to the telephone:

1. A physician or hospital;

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2. An ambulance or rescue squad service;
3. The local fire department;
4. The local police department;

NOTE: If there is a generic emergency number such as, but not limited to, 911 operable in the locality, that number may be posted instead of the above numbers.

5. A regional poison control center.

§ 4.26. An operable flashlight and battery operated radio shall be kept in a designated area and available at all times.

Article 3. Small Appliances and Kitchen Equipment.

§ 4.27. Small electrical appliances, such as, but not limited to, curling irons, toasters and irons shall be placed in an area inaccessible to children.

§ 4.28. Sharp kitchen utensils shall not be accessible to or used by children in care.

§ 4.29. Electrical fans in use shall be placed in areas inaccessible to children.

Article 4. Space and Equipment for Children.

§ 4.30. The home shall provide each child with space for free movement and active play without overcrowding indoors or outdoors.

§ 4.31. Each child two years of age and older shall have access to individual space in which to keep clothing, toys, and belongings together. Children under the age of two shall have an individual space that is accessible to the care giver and parent.

§ 4.32. Each child shall be provided with a designated crib, cot, or bed for resting or napping. School age children may use a rest mat.

A. Clean linen suitable to the season shall be used each time children sleep on beds of family members.

B. Clean linen suitable to the season shall be used and washed at least weekly and as needed.

§ 4.33. Cribs shall be provided for children from birth up to 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or bed.

A. Double decker cribs and playpens shall not be used for sleeping.

B. Crib slats shall be no more than 2-3/8 inches apart.

C. Crib sides shall always be up and the fastenings secured when a child is in the crib, except when the care giver is giving the child immediate attention.

§ 4.34. High chairs shall be tip proof and when occupied by a child a safety strap shall be used.

§ 4.35. Any swimming and wading pools shall be set up and maintained according to manufacturer instructions. When not in use, swimming and wading pools shall be covered.

PART V. CARE OF CHILDREN.

Article 1. Program and Services.

§ 5.1. The provider shall establish a daily routine so that there is sufficient time included to talk with, play with, and offer physical comfort to children in care.

§ 5.2. Age appropriate activities shall be provided for children in care throughout the day and shall be based on the physical, social, emotional and intellectual needs of the children.

§ 5.3. Age appropriate activities shall include:

1. Opportunities for alternating periods of indoor active and quiet play depending on the ages of the children;

2. Opportunities for vigorous outdoor play daily, depending upon the weather, the ages, and health of the children;

3. One or more regularly scheduled rest or nap periods;

4. Opportunities for children to learn about themselves, others and the world around them; and

5. Opportunities for children to exercise initiative and develop independence in accordance with their ages.

§ 5.4. A sufficient supply and variety of age appropriate play material and equipment shall be available to children in care.

§ 5.5. Television shall be used with discretion and not as a substitute for planned activities. The amount of time children watch television and the type of programs viewed shall be monitored by the provider.

Article 2. Supervision.

§ 5.6. Care givers shall promptly respond to infants' needs

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for food and comfort.

§ 5.7. Play spaces for infants shall offer a diversity of experiences for the infant and provide frequent opportunities to creep, crawl, toddle and walk.

§ 5.8. An awake infant not playing on the floor or ground shall be provided a change in play space at least every 30 minutes and more often as determined by the needs and demands of the individual infant.

§ 5.9. An infant who falls asleep in a play space other than his own sleeping space shall be moved to his designated sleeping space.

§ 5.10. Stimulation shall be regularly provided for infants in a variety of ways including but not limited to being held, cuddled, talked to, and played with by the group family day care home provider or assistant(s).

§ 5.11. Children shall be supervised by care giver at all times and shall not be left in the care of an assistant under the age of 18 years.

§ 5.12. Children shall be supervised in a manner which ensures that the care giver(s) is aware of what the children are doing at all times and can assist or redirect activities when necessary. In deciding how closely to supervise children, providers shall consider the following:

1. Age of the children;
2. Individual differences and abilities;
3. Layout of the house and play area;
4. Neighborhood circumstances, hazards; and
5. Risk activities children are engaged in.

§ 5.13. When children are permitted to swim and wade, the care giver(s) shall be present at all times and able to respond immediately to emergencies.

Article 3. Diapering and Toileting.

§ 5.14. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

§ 5.15. The following steps shall be used for diapering:

1. Diapers shall be changed on a nonabsorbent surface. Children shall not be left unattended during diapering.
2. The child's genital area shall be thoroughly cleaned with a clean cloth or a disposable wipe during each diapering.
3. Care givers shall wash their hands with soap or

germicidal cleansing agents and water after each diaper change and after helping a child with toileting.

4. The diaper changing surface shall be cleaned with soap and water and disinfected with a water and chlorine bleach solution after each use.

5. Surfaces used for children's activities or meals shall not be used for changing diapers.

§ 5.16. Toilet chairs shall be emptied promptly and disinfected after each use.

§ 5.17. Children's hands shall be washed with soap and water after toileting.

§ 5.18. Children shall be permitted privacy when toileting.

Article 4. Transportation.

§ 5.19. Whenever the provider or assistant transports enrolled children they shall:

1. Have a valid driver's license;
2. Have a first aid kit, including an ice pack, in the vehicle used for transporting;
3. Maintain at least the minimum required car insurance set by the Code of Virginia;
4. Obtain written consent from parent before transporting children;
5. Have the name, address and phone number of the family day care home and additional emergency contact numbers in the car when transporting children;
6. Have the child's emergency authorization; and
7. Use safety belts and child restraints according to Virginia state statutes.

Article 5. Behavior and Guidance.

§ 5.20. The provider shall discuss with each child's parent(s) the rules and limits used to encourage desired behavior and discourage undesired behavior of children in care.

§ 5.21. The care givers shall use positive methods of discipline. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied and appropriate and understandable for the child's level;
2. Providing children with reasons for limits;

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3. Giving positively worded direction;

4. Modeling and redirecting children to acceptable behavior;

5. Helping children to constructively express their feelings and frustration to resolve conflict; and

6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

§ 5.22. The care giver(s) shall not use physical (corporal) punishment or any humiliating or frightening methods of discipline.

§ 5.23. Children shall not be punished for toileting accidents.

§ 5.24. When separation is used as a discipline technique, it shall be brief and appropriate to the child's developmental level and circumstances. The isolated child shall be in a safe, lighted, well ventilated place and shall be within hearing and vision of the provider or substitute provider.

Note: If separation is enforced by an adult, it shall not exceed one minute for each year of the child's age. Separation shall not be used with infants.

§ 5.25. No child, for punishment or any other reason, shall ever be confined in any space that the child cannot open, such as but not limited to closets, locked rooms, latched pantries, or containers.

§ 5.26. The provider or substitute provider shall not give a child authority to punish another child nor shall provider consent to a child punishing another child.

Article 4. Nutrition and Food Services.

§ 5.27. A variety of foods served to children for breakfast, lunch and supper shall consist of items selected from the following four groups:

1. Meat/meat alternates
2. Fruits and vegetables
3. Bread/bread alternates and cereal
4. Milk

Note: Providers shall supplement meals from homes that do not meet this standard.

§ 5.28. Snacks served to children shall include items from two or more different food groups. A variety of food items shall be served for snacks.

§ 5.29. To assist in preventing choking, food such as but

not limited uncut hot dogs, nuts, seeds, raisins, uncut grapes, uncut raw carrot, and popcorn shall not be served to children three years of age and younger.

§ 5.30. Leftover food shall be discarded from individual plates following a meal or snack.

§ 5.31. Children shall be served small size portions and permitted to have additional servings.

§ 5.32. Water shall be available for drinking and shall be offered on a regular basis for all children in care.

§ 5.33. Special dietary foods shall be provided as directed by a physician for individual children or in accordance with religious requirements.

§ 5.34. Meals and snacks shall be served in accordance with the times children are in care which includes:

1. Between the hours of 7 A.M. and 6 P.M., breakfast, lunch, and snacks shall be served.
2. Between the hours of 2 P.M. and 10 P.M., afternoon snack, supper and a bed time snack shall be served.
3. Between the hours of 8 P.M. and 8 A.M., a bed time snack and breakfast shall be served.

§ 5.35. The atmosphere during meal services shall be relaxed. Children shall have an opportunity to learn to eat and enjoy a variety of nutritious foods.

§ 5.36. When meals are provided by the family day care home, menus shall be planned, written, dated and posted at the beginning of each week in an area accessible to parents. Copies of menus shall be maintained for at least three months.

§ 5.37. Children's hands shall be washed with soap and water before eating meals or snacks.

§ 5.38. Care giver(s) hands shall be washed with soap or germicidal cleansing agent and water before handling or serving food.

§ 5.39. Infants shall be fed on demand unless parents provide other written instructions.

§ 5.40. Prepared infant formula shall be labeled with the individual child's name and kept in the refrigerator when not in use.

§ 5.41. Microwave ovens shall not be used to heat baby bottles.

§ 5.42. Infants who cannot hold their own bottles shall be picked up and held when fed. Bottles shall not be propped.

§ 5.43. Children shall not be allowed to eat and drink while walking or lying down.

§ 5.44. High chairs or infant carrier seats may be used for children under 12 months who can hold their own bottles and who are not held while being fed.

§ 5.45. Children using infants seats or high chairs shall be carefully supervised during meals. When a child is placed in an infant seat, the protective belt shall be fastened securely.

§ 5.46. Eating utensils and dishes shall be appropriate in size for children to handle.

§ 5.47. Eating utensils and dishes shall be properly cleaned by scraping, prerinsing, washing and air drying.

§ 5.48. Eating utensils and dishes shall be stored in a clean, dry place and protected from contamination.

§ 5.49. If disposables are used for eating, they shall be sturdy enough to prevent spillage or other health and safety hazards. Disposables shall be used once and discarded.

§ 5.50. Chipped or cracked dishes shall not be used.

§ 5.51. An operable thermometer shall be placed in all refrigerator and freezer compartments. Temperatures shall be maintained at or below 45°F in refrigerator compartments and at or below 0° in the freezer compartments.

§ 5.52. All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.

§ 5.53. All milk and milk products shall be pasteurized. Powdered milk may be used only for cooking.

§ 5.54. Care givers shall use sanitary practices when handling and preparing foods.

§ 5.55. Family pets shall not be allowed on any surfaces where food is prepared or served.

PART VI. PHYSICAL HEALTH.

Article 1.

Health Requirements for Family Day Care Household and Care Givers.

§ 6.1. Health information shall be maintained on the care giver(s) and any other adult household members who come in contact with children or handles food served to children, as described below:

1. Initial tuberculosis examination and report.

a. Within 30 days prior to licensure, employment or contact with children, each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form.

b. Each individual shall submit a statement that he is free of tuberculosis in a communicable form, including type(s) of test(s) used and the result(s).

c. The statement shall be signed by a physician, the physician's designee, or an official of a local health department.

d. The statement shall be filed in the individual's record.

2. Subsequent evaluations.

a. An individual who had a significant (positive) reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis shall obtain chest x-rays on an annual basis for the following two years.

(1) The individual shall submit statements documenting the chest x-rays and certifying freedom from tuberculosis in a communicable form.

(2) The statements shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

(3) The statements shall be filed in the staff member's records.

(4) Screening beyond two years is not required unless there is known contact with a case of tuberculosis or development of chronic respiratory symptoms.

b. Additional screening is not required for an individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test.

c. Any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an evaluation in accordance with subdivision 1 of § 6.1.

§ 6.2. At the request of the provider or the Department of Social Services, a report of examination by an approved physician shall be obtained when there is an indication that the safety of children in care may be jeopardized by the physical or mental health of a specific individual.

§ 6.3. Any individual who, upon examination or as a result of tests, shows indication of physical or mental condition(s) which may jeopardize the safety of children in care:

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1. Shall be removed immediately 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 2.

Health Requirements for Children.

§ 6.4. Timing and frequency of medical reports.

A. Each child accepted for care shall obtain a physical examination and immunization record by or under the direction of a licensed physician prior to admission (as outlined below) or within 30 days after admission:

1. Within 60 days prior to admission for children six months of age or younger.

2. Ninety days prior to admission for children aged seven months through 18 months.

3. Six months prior to admission for children aged 19 months through 24 months.

4. Twelve months prior to admission for children two years of age through five years of age.

5. Twenty-four months prior to admission for children six years of age and above.

EXCEPTIONS:

1. A new physical examination is not required for children transferring from one facility licensed by the Virginia Department of Social Services, certified by a local department of public welfare or social services, or approved by a licensed family day care system.

2. Physical examinations are not required for any child whose parent objects on religious grounds. The parent shall submit a statement noting that the parent objects on religious grounds and certifying that, to the best of the parent's knowledge, the child is in good health and free from communicable and contagious disease.

B. Medical reports after admission.

1. Updated information on immunizations received shall be obtained once every six months for children under the age of two years.

2. Updated information on immunizations received shall be obtained once between each child's fourth and sixth birthdays.

EXCEPTION: Documentation of immunizations received is not required for any child whose parent submits an

affidavit to the center stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices.

§ 6.5. Form and content of medical reports.

A. The current form approved by the Virginia Department of Health, or any other form which provides all of the same information, shall be used to record immunizations received and the results of the required physical examination.

B. Each report shall include the date of physical examination or dates immunizations were received.

C. Each report shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

Article 3.

Illness, Injury and Death.

§ 6.6. Unless otherwise approved by a child's health care professional, a child shall be excluded from the group family day care home if they evidence the following symptoms:

1. Temperature of 100°F; or

2. Recurrent vomiting or diarrhea; or

3. Symptoms of a communicable disease as delineated in the current Communicable Disease Chart recommendation for the exclusion of sick children.

§ 6.7. If a child in care develops symptoms of an illness defined in § 6.6 of this regulation, the following shall apply:

1. The parents or designated emergency contact shall be contacted immediately so that arrangements can be made to remove the child from the home as soon as possible, and

2. The child shall remain in a designated quiet, private area until leaving the home.

§ 6.8. When a child in care has been exposed to a reportable communicable disease, the parent shall be informed.

§ 6.9. Major injuries to the head, other parts of the body, and major accidents shall be reported immediately to the child's parent(s). Minor injuries and accidents shall be reported to the child's parent(s) on the same day they occur.

§ 6.10. Each injury or accident shall be recorded in the child's record. Information recorded shall include date of injury or accident, action taken and nature of injury or accident.

§ 6.11. The provider shall report by telephone within 24 hours to the department any accident, injury or illness that occurred while a child was in care which results in death. A written report shall be completed and submitted to the department within five working days.

Article 4. Medicines.

§ 6.12. Nonprescription drugs, including but not limited to vitamins and aspirin, may only be given to a child with a parent's written consent. Prescribed drugs shall be given to a child only in accordance with a doctor's signed order or authentic prescription label and with a parent's or guardian's written consent. A copy of such written permission shall be kept in the child's records. Provider shall keep a log of medication given children which shall include the following:

1. Child to whom the medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child; and
4. Name of provider or adult assistant administering the medication. Note: Assistants under the age of 18 shall not administer medication.

§ 6.13. All medicines shall be identified, carefully labeled with the child's name and stored in an area inaccessible to children. All medicine shall be returned to parents when no longer needed. Prescription medicines shall be in original container with the prescription label attached.

§ 6.14. First aid supplies shall be readily accessible to the care giver(s) and inaccessible to children. The required first aid supplies which shall be available are:

1. Scissors;
2. Tweezers;
3. Gauze pads;
4. Adhesive tape;
5. Band-aids, assorted;
6. An antiseptic cleaning agent;
7. An anti-bacterial ointment;
8. Thermometer;
9. Chemical ice pack, if ice not available;
10. First aid instructional manual; and

11. Insect bite or sting preparation.

Article 5. Animals.

§ 6.15. Only domestic animals shall be permitted in areas used by children receiving care.

§ 6.16. All pets subject to immunization shall be immunized in accordance with the law.

PART VII. RECORD KEEPING RESPONSIBILITY.

§ 7.1. Each group family day care home shall maintain records for each child. Records of withdrawn children shall be kept on file for one year after the withdrawal date.

§ 7.2. Each child's records shall include:

1. Identifying information:

- a. Child's name, nickname (if any), address and birthdate;
- b. Parent's name(s), address(es) and telephone number(s);
- c. Parent(s) place of employment, work hours and work telephone number;
- d. Child's physician's name and telephone number;
- e. Name, address and telephone number of one or more designated person(s) to contact in case of an emergency if the parent cannot be reached;
- f. Names of persons authorized to visit, call or pick up the child(ren) as well as those who are not to visit, call or pick up the child(ren). Appropriate custodial paperwork shall be maintained when a parent requests that the provider not release the child(ren) to the other parent; and
- g. Date of admission and withdrawal.

2. Medical information required by §§ 6.4 and 6.5 of this regulation.

3. Completed agreement forms.

a. Written agreements shall be made between the provider and the parent(s) for each child in care. One copy shall be maintained with the record and one copy shall be given to the parent(s).

b. Agreement forms shall cover:

(1) Hours of care per day, week, or month; cost of care per day, week, or month; frequency and

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amount of payment per day, week, or month; and any special services to be provided by either party to the agreement;

(2) Provisions that the care giver will notify the parent whenever a child becomes ill and the child will be picked up as soon as it is feasible for the parent or other responsible person to do so;

(3) Procedures for emergency care in case of illness or injury and written authorization for emergency medical care if parents cannot be located immediately;

(4) Discipline policy acknowledged;

(5) Written authorization for participation in specific classes, clubs, field trips or other activities, when feasible, indicating the activity, time of leaving and returning, and method of transportation to the activity and written consent of specific person(s) to transport a child other than the provider; and

(6) Written individual authorization for trips outside of the immediate community when taken.

§ 7.3. The provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent(s) of the child has granted written permission to do so, except in the course of performance of official duties and to employees or representatives of the department.

PART VIII. PARENT INVOLVEMENT.

§ 8.1. Parents shall be permitted to visit, observe and pick up their child(ren) at any time.

§ 8.2. The provider shall share information daily with parents about their child(ren)'s health, development, behavior, adjustment, and needs.

Commonwealth of Virginia
Department of Social Services

REQUIRED INFORMATION TO BE SUBMITTED WITH A NEW APPLICATION FOR LICENSE
TO OPERATE A FAMILY DAY CARE HOME
(Attach additional sheets as needed.)

I. IDENTIFYING DATA

A. Name of Applicant To Whom License Is To Be Issued (First, Middle/Maiden, Last)		B. Birthdate of Applicant	
C. Street Address		D. Zip Code	
E. Mailing Address (If different from street address)		F. Zip Code	
G. Area Code/Telephone Number	H. Is the Telephone in Your Name? <input type="checkbox"/> Yes <input type="checkbox"/> No	I. Is the Telephone No. Listed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
J. DIRECTIONS (Give specific directions for reaching your home from central point of the nearest town or main highway)			

II. ADMINISTRATION/PERSONNEL

A. Requested Licensed Capacity (No. of Children for which you wish to be licensed): Requested Capacity: Age Range From: Through: Through:		B. Number of Children Currently Receiving Day Care in Your Home: Age Range From: Through: Through:	
C. Have you had any previous experience in caring for other people's children <input type="checkbox"/> Yes <input type="checkbox"/> No		D. Name of Assistant (if you have one):	

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Department of Social Services

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III. INFORMATION ABOUT THE HOME

A. Number of Rooms	B. Number of Toilets Inside Home	C. Number of Outdoor Toilets
D. Source of Water Supply <input type="checkbox"/> Public <input type="checkbox"/> Private		E. Is there a septic tank? <input type="checkbox"/> Yes <input type="checkbox"/> No
Owned by:		

IV. INFORMATION ABOUT OCCUPANTS OF THE HOME

A. Family Members Living in Your Home

Full Name	Birthdate	Relationship to You

B. List Below Everyone Else Living in Your Home

Full Name	Birthdate	Relationship to You	If Placed by an Agency Give Name of Agency

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III. REFERENCES

A. List the names and addresses of three persons not related to you by blood or marriage who know of your character and reputation.

Name	Full Address and Telephone Number

B. Have you, or any person living in your home or any person helping you care for children, been convicted of a crime involving child abuse, child neglect, or moral turpitude?

Have you or any person living in your home or any person helping you care for children, had a founded child abuse/neglect complaint. Yes No

C. Name and Address of any agency that may have placed children in your home in the past five years. Yes No

VI. REQUIRED ATTACHMENTS

1. The appropriate fee must be attached for processing the application. A check or money order must be made payable to the Treasurer of Virginia.
2. A list of indoor and outdoor play equipment, materials and/or supplies available to children.
3. Approval from local health officials, if you have private water/sewer system.

VII. OPTIONAL ATTACHMENT

The following attachments are not required to be submitted at this time. Providing these attachments would assist in expediting the processing of the application. It will enable the licensing specialist to review these documents along with the application rather than during a future onsite visit.

1. Describe provision(s) for communication with parents. Submit copies of written information to be shared with parents. The information and Agreement Form provided by the Department of Social Services may be used.
2. Samples of all forms developed, such as an application form, agreement form, etc., if different from the model forms provided by the Department of Social Services.

032-05-335/1 (8/87)

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: VR 672-20-11. Solid Waste Management Facility Permit Application Fees.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Dates:

February 24, 1992 - 10 a.m.

February 26, 1992 - 1 p.m.

(See Calendar of Events section for additional information)

Summary:

At its 1990 session, the General Assembly authorized the Department of Waste Management to collect permit application fees from any person operating or proposing to operate a facility for storage, treatment, or disposal of nonhazardous solid waste to defray costs related to the issuance of permits. Based on the historical time-and-effort data and the more recent outcome of the process streamlining effort, the department is proposing a detailed schedule of fees that takes into account the type of facility, as required by the Code. To meet the further requirement to consider the applicant's financial resources, the proposed fee schedule is set to recoup only a portion of the total costs associated with the issuance process. The proposed fees range from \$3,300 to \$17,500, about 90% of the total direct costs of issuance of a permit for a new facility. Fees for permit amendments are also proposed and reflect the same relationship to direct costs.

VR 672-10-11. Solid Waste Management Facility Permit Application Fees.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Act" or "regulations" means the Virginia Waste Management Act or regulation last cited in the context unless otherwise indicated.

"Applicant" means for the purposes of this regulation any and all persons seeking or holding a permit to manage solid or infectious waste.

"Board" means the Virginia Waste Management Board.

"Certification" means, for the purposes of this regulation, a statement from the governing body of the county, city or town in which the facility is to be located

that the location and operation of the facility are consistent with all applicable ordinances.

"Closure" means the act of securing a waste management facility pursuant to the requirements of applicable regulations.

"Closure plan" means the plan for closure prepared in accordance with the requirements of applicable regulations.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as defined by the Virginia Sewerage Regulations.

"Compost facility" means, for the purpose of this regulation, a facility that produces compost.

"Construction/demolition/debris landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, inert waste, or combinations of the above solid wastes.

"Construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semiliquids and garbage are not construction wastes.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents which could threaten human health or the environment.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Waste Management.

"Director" means the Director of the Department of Waste Management.

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"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters.

"Disposal facility" means a facility or part of a facility at which waste is intentionally placed into or on any land or water, and at which the waste will remain after closure.

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director.

"Energy recovery facility" means, for the purpose of this regulation, a facility that recovers energy from combustion or other thermal treatment of solid waste.

"Existing facility" means any permitted solid or infectious waste management facility that received waste prior to the effective date of these regulations and has not been closed in accordance with appropriate regulations.

"Facility" means solid or infectious waste management facility unless the context clearly indicates otherwise.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Incineration" means, for the purposes of this regulation, the controlled combustion of solid or infectious waste as defined in the Virginia Solid Waste Management Regulations (VR 672-20-10) or Infectious Waste Management Regulations (VR 672-40-1), as applicable.

"Incinerator" means, for the purposes of this regulation, a facility or device designed for the treatment of solid or infectious waste by combustion as defined in the Virginia Solid Waste Management Regulations (VR 672-20-10) or Infectious Waste Management Regulations (VR 672-40-1).

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not

include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste which is a byproduct of a production process.

"Infectious waste" means solid wastes defined to be infectious wastes in Part III of the Virginia Infectious Waste Management Regulations.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble or suspended degradation products of waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a waste water collection system is regulated as industrial waste water.

"Liner" means a layer of emplaced materials beneath or on the sides of a surface impoundment, landfill, or landfill cell which restricts the downward or lateral escape of solid waste, waste constituents or leachate.

"Materials recovery facility" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste.

"Monitoring" means all methods, procedures and techniques used to systematically analyze, inspect and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring wells" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"New waste management facility" or "new facility" means, for the purposes of this regulation, a facility for which a permit was issued, or revoked and reissued, after the effective date of this regulation. (See also, existing waste management facility.)

"Notice of intent" means a statement from the applicant proposing to establish a new solid waste management facility, to modify an existing facility, or to amend an existing permit. The notice of intent shall include local government certification, any forms required by the Virginia Solid Waste Management Regulations, disclosure statement and all pertinent fees required by this regulation.

"Operator" means the person responsible for the overall

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operation and site management of a solid or infectious waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid or infectious waste management facility.

"Permit" means the written permission of the director to own, operate or construct a solid or infectious waste management facility.

"Permit by rule" means provisions of the regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted waste management facility (or permitted facility)" means a waste treatment, storage, or disposal facility that has received a permit in accordance with the requirements of appropriate regulations.

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

"Post-closure care" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Part V of the Virginia Solid Waste Management Regulations.

"Resource recovery" means the recovery of material or energy from solid waste.

"Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

"Site" means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid or infectious waste. (Note: This term includes all sites whether they are planned and managed facilities or are open dumps.)

"Solid waste" means any of those materials defined as "solid waste" in Part III of Virginia Solid Waste Management Regulations.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" ("SWMF") means a site used for planned treating, storing, and disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Storage" means the holding of waste, at the end of which the waste is treated, recycled, disposed, or stored elsewhere.

"Storage facility" means any facility which stores waste.

"Training" means formal instruction, supplementing an employee's existing job knowledge, designed to protect human health and the environment via attendance and successful completion of a course of instruction in waste management procedures, including contingency plan implementation, relevant to those operations connected with the employee's position at the facility.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or infectious waste are held during the normal course of transportation.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Treatment" means any method, technique or process, including but not limited to incineration or neutralization, designed to change the physical, chemical or biological character or composition of any waste to neutralize it or to render it less hazardous or infectious, safer for transport, amenable to recovery, or storage or reduced in volume.

"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.

PART II. LEGISLATIVE AUTHORITY AND GENERAL INFORMATION.

§ 2.1. Authority for regulation.

These regulations are promulgated pursuant to § 10.1-1402 11 of the Code of Virginia (hereinafter Code) which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of the Virginia Waste Management Act and the federal acts and § 10.1-1402 16 of the Code which authorizes the board to collect, from any person operating

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or proposing to operate a sanitary landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste, permit application fees sufficient to defray only costs related to the issuance of permits.

§ 2.2. Purpose of regulation.

The purpose of this regulation is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit or seeking a modification or an amendment to an existing permit for operation of a solid or infectious waste management facility in this Commonwealth.

§ 2.3. Administration of regulation.

A. The Virginia Waste Management Board promulgates and enforces regulations that it deems necessary to carry out its powers and duties.

B. The director is authorized and directed to administer this regulation in accordance with the Virginia Waste Management Act, §§ 10.1-1400 through 10.1-1457 of the Code.

§ 2.4. Applicability of regulations.

A. This regulation applies to all applicants for solid or infectious waste management facility permits under Part VII of the Virginia Solid Waste Management Regulations or Part IX of the Infectious Waste Management Regulations, respectively, unless specifically exempt under § 2.4 E. The fees shall be assessed in accordance with Part III of this regulation.

B. When the director finds it necessary to amend or modify any permit under § 7.14 of the Virginia Solid Waste Management Regulations or §§ 9.14 and 9.15 of the Infectious Waste Management Regulations, as applicable, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with § 3.3 of this regulation even if the director has initiated the amendment or modification action.

C. When the director finds it necessary to revoke and reissue any permit in accordance with § 7.12 B 1 of the Virginia Solid Waste Management Regulations or §§ 9.14 and 9.15 of the Infectious Waste Management Regulations, as applicable, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with § 3.2 of this regulation.

D. If the director finds it necessary either to revoke and reissue a permit in accordance with § 7.12 B 2 of the Virginia Solid Waste Management Regulations, or to perform a minor amendment or modification of a permit in accordance with § 7.14 F of the Virginia Solid Waste Management Regulations, or § 9.17 of the Infectious Waste Management Regulations, as applicable, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with § 3.4 of this

regulation.

E. Exemptions.

No permit application fees will be assessed to:

1. The applicant for an emergency permit to a nonhazardous solid or infectious waste treatment, storage, or disposal facility in accordance with applicable regulations.

2. The owners and operators of facilities which are deemed to possess a permit-by-rule in accordance with applicable regulations.

(NOTE: Transfer facilities regulated under the Infectious Waste Management Regulations do not require a permit and, consequently, are not subject to this regulation.)

§ 2.5. Payment, deposit, and use of fees.

A. Due date.

1. Except as specified in § 2.5 A 2 and 2.5 A 3 all permit application fees are due on the day of application and must accompany the application.

2. Applicants for solid waste management permits shall submit the appropriate fee along with the certification from the local governing body and the disclosure statements at the time of the submittal of the notice of intent.

3. All applicants for a solid or infectious waste management facility permit or for a modification or amendment of an existing permit who have submitted their application prior to the effective date of this regulation and who have not been issued such a permit or a modification or amendment to a permit by that date, shall submit the appropriate application fee within 60 days of the effective date of the regulation or by the effective date of the permit or the modification or amendment to the permit, whichever is sooner. Applicants that have received from the department an approval or a conditional approval of the Part A of their application prior to the effective date of these regulations need to submit only the fee for Part B of the application.

B. Method of payment.

Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Waste Management.

C. Incomplete payments.

All incomplete payments will be deemed nonpayments.

D. Late payment.

No applications will be deemed to be complete (see §§ 7.2 C and 7.2 D of the Virginia Solid Waste Management Regulations or § 9.2 C of the Infectious Waste Management Regulations) until proper payment is received by the department.

E. Deposit and use of fees.

The department shall collect all fees pursuant to this regulation and deposit them into a special fund. All moneys so collected by the department shall be used solely to defray the direct costs of processing solid waste management facility permit applications. No such moneys shall be used to defray indirect costs or otherwise be used except for the processing of solid waste management facility permit applications.

(NOTE: With the exception of emergency permits and permits-by-rule under the Infectious Waste Management Regulations, the department cannot act on an incomplete application (see §§ 7.2 C 2 and 7.2 D 2 of the Virginia Solid Waste Management Regulations or § 9.2 C of the Infectious Waste Management Regulations). Nonpayment of fees will result in the processing delay and may lead to termination procedures in case of permits being amended or revoked and reissued for cause.)

PART III. DETERMINATION OF FEE AMOUNT.

§ 3.1. General.

A. Each application for a new permit, each application for a modification or amendment to a permit, and each revocation and issuance of a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this Part III.

B. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Part VII of the Virginia Solid Waste Management Regulations or Part IX of the Infectious Waste Management Regulations and includes costs for personnel and directly related public participation costs. The fee schedules are shown in Appendix 3.1. These schedules will be reevaluated annually and the results of such reevaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments, if any.

§ 3.2. New facility permits.

All applicants for new nonhazardous solid and infectious waste treatment, storage, and disposal facility permits are assessed an appropriate fee shown in Table 3.1-1, Appendix 3.1 which depends on the type of facility permit being applied for.

(NOTE: Certain solid waste management facility permit amendments are so extensive that they require issuance of new permits (see § 7.0 C of the Virginia Solid Waste

Management Regulations). Such applications will be considered to be applications for new facilities.)

§ 3.3. Applications for permit amendment or modification.

A. General.

Facility permits issued by the department are typically based on the modular concept to assure completeness and consistency of the documents. Each facility permit may consist of several modules dealing with the requirements addressing separate topics pertinent to the specific facility. The modules used in the nonhazardous solid and infectious waste program are:

1. General permit conditions module (Module I) that contains the general conditions required for all solid or infectious waste facility permits and includes documents to be submitted prior to operation, documents that must be maintained at the facility, and a compliance schedule, if any.

2. General facility requirements module (Module II) that contains the listing of wastes that the facility may accept or a list of wastes prohibited from acceptance, analysis plan, security and site access, inspection requirements, personnel training requirements, special standards based on particular location, preparedness and prevention plan, contingency plan, closure and post-closure cost estimates, and facility-specific financial assurance requirements.

3. Separate facility modules, one for each of the different type of facility provided for in Parts V and VI of the Virginia Solid Waste Management Regulations, that contain design requirements (e.g., liners, leachate management systems, aeration systems, wastewater collection systems), specific operating requirements (e.g., compaction and cover requirements, equipment, monitoring), and recordkeeping requirements. The following modules have been developed:

- a. Module III - Sanitary landfills;
- b. Module IV - Construction/demolition/debris landfill;
- c. Module V - Industrial landfill;
- d. Module VI - Compost facility;
- e. Module VII - Transfer station;
- f. Module VIII - Materials recovery facility; and
- g. Module IX - Energy recovery and incineration facility.

4. Groundwater monitoring modules that contain

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requirements for well location, installation, and construction, listing of monitoring parameters and constituents, sampling and analysis procedures, statistical procedures, data evaluation, recordkeeping and reporting, and special requirements when significant increases occur in monitoring parameters. Module X is designed specifically for Phase I monitoring and Module XI for Phase II or III monitoring.

5. Closure module (Module XII) included in all permits that contains requirements for actions during the active life of the facility (updating plan), during the closure process, and after the closure has been performed.

6. Post-closure module (Module XIII) included in solid waste disposal facility permits that contains requirements during the post-closure period and for periodic updating of the post-closure plan.

7. Schedule for compliance for corrective action (Module XIV) used when facility groundwater monitoring results indicate contamination.

8. Leachate handling module (Module XV) included in solid waste disposal facility permits that contains requirements for storage, treatment and disposal of leachate generated by the facility.

(NOTE: Appropriate modules for infectious waste storage and treatment facilities (other than incineration) have not been developed as yet.)

B. Applicants for a modification or amendment of an existing permit will be assessed a fee associated with only those modules that will require changes. In situations where the modular concept is not employed (for example, changes have been incorporated directly into an older permit), fees will be assessed as appropriate for the requirements stipulated for modules in § 3.3 A had they been used.

C. Applicants for a modification or amendment or subject to revocation and reissuance of an existing permit will be assessed a separate public participation fee whenever the modification or amendment requires a public hearing.

D. The fee schedules for the modification or amendment or subject to revocation and reissuance of an existing permit are shown in Table 3.1-2, Appendix 3.1.

E. In no case will the fee for a modification or amendment or revocation and reissuance of a permit be higher than that for a new facility of the same type.

§ 3.4. Minor amendments or modifications.

Notwithstanding the provisions of § 3.3, an applicant for a minor amendment or modification of an existing

facility permit based on § 7.14 F of the Virginia Solid Waste Management Regulations or § 9.17 of the Infectious Waste Management Regulations will be assessed a fee shown in Table 3.1-3, Appendix 3.1.

APPENDIX 3.1 PERMIT APPLICATION FEE SCHEDULES

§ 3.1-1. Effective Date. The effective date of this Appendix is

§ 3.1-2. Application Fee Schedules.

TABLE 3.1-1. NEW FACILITIES

TYPE OF FACILITY	FEE
All landfills	
Part A application	\$3,200
Part B application	\$14,300
Incineration/Energy Recovery Facility	\$4,500
Transfer Station, Materials Recovery Facility, Infectious Waste Storage Facility, Infectious Waste Treatment Facility	\$3,300
Compost Facility	
Part A application	\$1,600
Part B application	\$8,100
Experimental Solid Waste Facility	(Reserved) ¹

¹ Indicates insufficient experience at the present time to determine proper fee. Should an application for such a facility be received, the lowest fee in the table will be assessed.

TABLE 3.1-2. PERMIT AMENDMENTS OR MODIFICATIONS

TYPE OF PERMIT MODULE	FEE
General - Module I	\$300
Facility - Module II	\$1,000
Landfill - Module III, IV, or V	\$5,400
Design plan review	\$700
Liner design review	\$1,500
Leachate system review	\$1,000
Gas management plan review
Drainage plan review	\$700
Cover design review	\$1,400
Equipment
Compost facility - Module VI	\$2,800
Design plan review	\$500
Liner design review	\$1,000
Leachate system review	\$700
Air supply system review
Drainage plan review	\$500
Equipment
Transfer station - Module VII	\$900
Material recovery facility - Module VIII	\$1,200
Waste supply analysis	\$500

Waste management areas	\$400
Wastewater management areas	\$300
Incinerator/Energy recovery facility - Module IX ..	\$2,300
Waste and residue storage	\$700
Operational requirements	\$1,200
Waste control procedures	\$400
Groundwater monitoring - Module X or XI	\$2,500
Well placement	\$1,000
Materials and specifications	\$300
Sampling plan	\$1,200
Well abandonment	
Closure - Module XII	\$300
Post-closure - Module XIII	\$300
Corrective action - Module XIV	(Reserved)
Leachate handling - Module XV	(Reserved)
Infectious waste storage facility - Module XVI	(Reserved)
Infectious waste treatment facility - Module XVII	(Reserved)
Public participation	\$800

TABLE 3.1-3. MINOR PERMIT AMENDMENT OR MODIFICATION

TYPE OF PERMIT MODULE	FEE
Minor amendment or modification	\$300

* * * * *

Title of Regulation: VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Public Hearing Date: February 28, 1992 - 11 a.m.
(See Calendar of Events section for additional information)

EDITOR'S NOTE ON INCORPORATION BY REFERENCE: Pursuant to § 9-6.18 of the Code of Virginia, 49 CFR Parts 171-179 and 390-397, is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Virginia Register of Regulations. Copies of this document are available for inspection at the Department of Waste Management, 11th floor, James Monroe Building, 101 N. 14th Street, Richmond, Virginia, and in the office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

Summary:

Amendment 10 proposes to incorporate, by reference, changes that were made by U.S. DOT to Title 49 Code of Federal Regulations (CFR), Parts 171-179, 383, and 390-397 from July 1, 1990, to June 30, 1991. These changes include (i) extension of the compliance date for having vertical restraints systems on certain DOT specification tank cars from November 15, 1990, to November 15, 1991; (ii) revision of the definition of "Etiologic agent" in 49 CFR 172.386(a)(1), deletion of

the "50 milliliter (1.666 fluid ounces) exception," and clarification of the "maximum net quantity in one packaging" limits for etiologic agents transported by aircraft as specified in Column 6 of the Hazardous Materials Table in § 172.101; (iii) revision of Part 396, Inspection, Repair and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSR) to require motor carriers to ensure that brakes and brake systems of commercial motor vehicles (CMV) are properly maintained and inspected by appropriate employees; (iv) incorporation of new requirements for placement of emergency response information on shipping papers, on vehicles, and at the safe handling and identification of hazardous materials involved in transportation incidents; and (v) corrections, editorial changes, clarifications, extension of effective dates of final rules, and other minor revisions.

In addition, this amendment includes a new section, Part 180, promulgated by U.S. DOT. Part 180 contains requirements for the maintenance, reconditioning, repair, inspection, and testing of packaging, as well as other functions relating to these activities. U.S. DOT believes that these changes will increase safety in the transportation of hazardous materials in cargo tanks by preventing leakage and the risk of fire in accidents through improvement of valving and closures.

VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified in 49 Code of Federal Regulations (CFR) Parts 170 through 177.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so determined by regulation or order.

"Transport" or "Transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

PART II.
GENERAL INFORMATION AND LEGISLATIVE

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AUTHORITY.

§ 2.1. Authority for regulation.

A. These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials.

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than applicable federal regulations.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to regulate the transportation of hazardous materials in Virginia.

§ 2.3. Administration of regulations.

A. The Director of the Department of Waste Management is designated by the Virginia Waste Management Board with the responsibility to carry out these regulations.

B. The Department of Waste Management is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia.

§ 2.4. Application of regulations.

Notwithstanding the limitations contained in Title 49, Code of Federal Regulations, § 171.1(a)(3), and subject to the exceptions set forth in § 2.5 below, these regulations apply to any person who transports hazardous materials, or offers such materials for shipment.

§ 2.5. Exceptions.

Nothing contained in these regulations shall apply to regular military or naval forces of the United States, nor to the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this Commonwealth, providing the same are acting within their official capacity and in the performance of their duties; nor to the transportation of hazardous radioactive materials in accordance with § 44-146.30 of the Code of Virginia.

§ 2.6. Regulations not to preclude exercise of certain regulatory powers.

Pursuant to § 10.1-1452 of the Code of Virginia, the provisions of these regulations shall not be construed so as to preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

§ 2.7. Transportation under United States Regulations.

Pursuant to § 10.1-1454 of the Code of Virginia, any person transporting or offering for shipment hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of these regulations, except when such transportation is excluded from regulation under the laws or regulations of the United States.

§ 2.8. Enforcement.

A. Law-enforcement officers.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any regulation promulgated hereunder, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials. Pursuant to § 10.1-1455 of the Code of Virginia, violation of these regulations is a Class 1 misdemeanor.

B. Civil judicial enforcement of these regulations shall be governed by § 10.1-1455 of the Code of Virginia.

§ 2.9. Application of Administrative Process Act.

The provisions of the Virginia Administrative Process Act, codified as § 9-6.14:1 of the Code of Virginia, govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings hereunder.

PART III.

COMPLIANCE WITH FEDERAL REGULATIONS.

§ 3.1. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials

promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of ~~June 30, 1990~~ June 30, 1991, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations (CFR) as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. Hazardous Materials Program Procedures in 49 CFR, Part 107, Subpart B.
2. Hazardous Materials Regulations in 49 CFR, Parts 171 through 177.
3. Shipping Container Specifications in 49 CFR, Part 178.
4. Specifications for Tank Cars in 49 CFR, Part 179.
5. *Qualifications and Maintenance of Cargo Tanks in 49 CFR, Part 180.*
5. 6. Commercial Licensing Requirements in 49 CFR, Part 383.
6. 7. Motor Carrier Safety Regulations in 49 CFR, Parts 390 through 397 (~~provided, however, that the requirements of 49 CFR, Part 391 relating to Controlled Substances Testing shall not become effective until 120 days after the effective date of Amendment 9 of the Virginia Regulations Governing the Transportation of Hazardous Materials~~).

PART IV. HAULING EXPLOSIVES IN PASSENGER-TYPE VEHICLES.

§ 4.1. Hauling explosives in passenger-type vehicles.

Explosives shall not be transported in or on any motor vehicle licensed as a passenger vehicle or a vehicle which is customarily and ordinarily used in the transportation of passengers except upon written permission of the State Police and under their direct supervision and only in the amount and between points authorized. If the movement is intracity, the permission of the properly designated authority of such city shall be secured. Dangerous articles, including small arms ammunition, but not including other types of explosives, may be transported in passenger-type vehicles provided the maximum quantity transported does not exceed 100 pounds in weight. Such transportation shall not be subject to these rules.

PART V. OUT OF SERVICE.

§ 5.1. Out of service.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have met the qualifications set forth in § 2.8, above, shall be

the agents authorized to perform inspections of motor vehicles in operation and to declare and mark vehicles "out of service" as set forth in 49 CFR, § 396.9.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-09. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

February 10, 1992 - 7 p.m.

February 14, 1992 - 2 p.m.

(See Calendar of Events section for additional information)

Summary:

In accordance with § 62.1-44.15(10) of the Code of Virginia, the State Water Control Board proposes to adopt a permanent regulation for the issuance of a General Permit for domestic sewage discharges less than or equal to 1,000 gallons per day. This regulation would supersede an emergency regulation adopted by the board on June 24, 1991, and which became effective on July 12, 1991.

A VPDES General Permit is issued by the state for a category of discharges instead of to an individual discharge. Anyone who fits into the category covered by the General Permit and who agrees to abide by its conditions may apply for coverage under it instead of applying for an individual VPDES permit. General permits may be issued for categories of dischargers located throughout the Commonwealth that (i) involve the same or similar types of operations; (ii) discharge the same or similar types of wastes; (iii) require the same effluent limitations or operating conditions; and (iv) require the same or similar monitoring.

The proposed regulation establishes standard limitations and monitoring requirements for the effluents discharged by all facilities covered by the VPDES General Permit. It also sets forth the minimum information requirements for all requests for coverage under the General Permit. As with an individual VPDES permit, the effluent limits in a VPDES General Permit will be set to protect the quality of the waters receiving the discharge. No discharge would be covered by the General Permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances. Also, the Department of Health would have to certify that there are no on-site sewage disposal options available to the lot owner.

Proposed Regulations

Sewage treatment plants which are designed for 1,000 gallons per day or less of waste are one such category. These plants are typically installed at individual homes when central sewer is not available and the soil conditions prohibit the use of septic tanks and drainfields. They may also be installed to treat domestic sewage from duplexes, churches, gas stations, etc., where sewage flow is low and other treatment alternatives are not available.

These proposed regulations have considered concerns raised during the public comment period on the Notice of Intended Regulatory Action.

VR 680-14-09. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

“Domestic Sewage” means the water-carried human wastes from residences, buildings, industrial establishments or other places.

§ 2. Purpose.

This General Permit regulation governs domestic sewage discharges to surface waters from treatment works that discharge less than or equal to 1,000 gallons per day on a yearly average.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 (7), (8), (9), (10), (14); 62.1-44.18; 62.1-44.19; 62.1-44.20; 62.1-44.21 of the Code of Virginia and 33 USC 1251 et seq. and § 6.2 of the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The executive director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This General Permit will become effective upon filing with the Registrar of Regulations and completion of public notice. This General Permit will expire five years from the effective date. This General Permit is effective as to any covered owner upon compliance with all the provisions of § 6 and the receipt of this VPDES General Permit.

§ 6. Authorization to discharge.

Any owner of a treatment works governed by this General Permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that the owner files the registration statement of § 7, complies with the effluent limitations and other requirements of § 8, and provided that the owner has complied with all the following conditions:

A. Individual permit.

The owner shall not have been required to obtain an individual VPDES permit as may be required in § 6.2 B of the Permit Regulation.

B. Prohibited discharge locations.

The owner shall not be authorized by this General Permit to discharge to surface waters where other board regulations or policies prohibit such discharges.

C. Central sewage facilities.

The owner shall not be authorized by this General Permit to discharge to surface waters where there are central sewage facilities reasonably available, as determined by the board.

D. Local government notification.

The owner shall obtain notification from the local government body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

E. Onsite sewage disposal system.

The owner shall have applied to the Department of Health for an onsite sewage disposal system permit and that system has been evaluated and found unsatisfactory by the Department of Health.

Receipt of this VPDES General Permit does not relieve any owner of the responsibility to comply with any other statute or regulation, including applicable regulations of the Department of Health adopted pursuant to §§ 32.1-163 and 32.1-164 of the Code of Virginia.

§ 7. Registration statement.

The owner shall file a complete VPDES General Permit Registration Statement for domestic sewage discharges of less than or equal to 1,000 gallons per day. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT
FOR DOMESTIC SEWAGE DISCHARGES

Proposed Regulations

LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

1. Name of Facility/Residence

2. Location of Facility (City or County)

3. Facility Owner

Last Name First Name

M. I.

4. Address of Owner

Street City State

Zip

5. Phone

Home Work

6. Location of Discharge (stream into which discharge occurs)

Attach a topographic or other map which indicates discharge point, property boundaries, wells, downstream houses, etc.

7. Amount of Discharge (gallons per day)

8. Are any pollutants other than domestic sewage to be discharged?

Yes No If yes, please indicate what:

9. Attach a diagram of the existing or proposed sewage treatment system, including the location of the facility/residence and the individual sewage treatment units.

10. Proposed facilities, additions of outfalls at existing facilities or any facilities which have not previously been issued a valid VPDES permit must attach to this Registration Statement notification from the local government body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

11. Attach a notification from the Department of Health that an on-site sewage disposal system permit has been applied for and that the system has been evaluated and found unsatisfactory by the Department of Health.

12. Are central sewage facilities available to this facility?
Yes No If yes, please explain:

13. Does this facility currently have a VPDES permit?
Yes No If yes, please provide Permit

Number:

Certification:

I hereby grant to duly authorized agents of the State Water Control Board, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature: Date:

For agency use only:

Accepted/Not Accepted Date:

§ 8. General Permit.

Any owner whose registration statement is accepted by the executive director or his designee will receive the following permit and shall comply with the requirements therein and be subject to all requirements of § 6.2 of the Permit Regulation (VR 680-14-01).

General Permit No.: VAG000001

Effective Date:.....

Expiration Date:.....

GENERAL PERMIT FOR DOMESTIC SEWAGE DISCHARGES
LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
AND
THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of domestic sewage discharges less than or equal to 1,000 gallons per day are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where Board Regulations or Policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting Requirements, and Part III - Management

Proposed Regulations

Requirements, as set forth herein.

PART IA. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)*	NA	NL	1/year	Estimate
BOD ₅	NA	30 mg/l	1/year	Grab
Suspended Solids	NA	30 mg/l	1/year	Grab
Fecal Coliform Bacteria**	NA	200/100 ml	1/year	Grab
Total Residual Chlorine	NA	Non-detectable	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5 mg/l	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

2. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* The design flow of this treatment facility is less than or equal to 1,000 gallons per day

** Continuous disinfection capability shall be provided in order to maintain this effluent limit.

Proposed Regulations

PART II.

MONITORING AND REPORTING.

A. Sampling and Analysis Methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in the permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR 136).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of Results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Monitoring Records.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for five (5) years from the date of the sample, measurement, report or application. Such records shall be made available to the Board upon request.

D. Reporting Requirements.

The permittee shall report any unpermitted, unusual or

extraordinary discharge which enters or could be expected to enter State waters. The permittee shall provide the following information regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours:

1. A description and cause of noncompliance;

2. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

3. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

E. Signatory Requirements.

Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration Statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a Municipality, State, Federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a Federal, municipal, or State agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the Board shall be signed by:

a. One of the persons described in subparagraph 1., a., b., or c. of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subparagraph 1.a., b., or c. of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Board prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under paragraph 1. or 2. of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

PART III.

MANAGEMENT REQUIREMENTS.

A. Change in Discharge or Management of Pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a new registration statement at least 180 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at any facility. There shall be no commencement of treatment or management of pollutants activities until a permit is received.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 180 days prior to all expansions, production

increases, or process modifications, that will result in new or increased pollutants. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

B. Treatment Works Operation and Quality Control.

1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to State waters.

b. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

c. Collected sludges shall be stored in such a manner as to prevent entry of those wastes (or runoff from the wastes) into State waters.

C. Adverse Impact.

The permittee shall take all feasible steps to minimize any adverse impact to State waters resulting from noncompliance with any limitation(s) and/or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) and/or conditions.

D. Duty to Halt, Reduce Activity or to Mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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E. Structural Stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("Bypass - means intentional diversion of waste streams from any portion of a treatment works") of the treatment works herein permitted is prohibited.

G. Compliance With State and Federal Law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other State law or regulation or under authority preserved by Section 510 of the Clean Water Act.

H. Property Rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or Local Laws or regulations.

I. Severability.

The provisions of this permit are severable.

J. Right of Entry.

The permittee shall allow authorized State and Federal representatives, upon the presentation of credentials:

- 1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;*
- 2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;*
- 3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;*
- 4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product;*

and

- 5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.*

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of Permits.

This permit may be transferred to another person by a permittee if:

- 1. The current owner notifies the Board 30 days in advance of the proposed transfer of the title to the facility or property;*
- 2. The notice includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and*
- 3. The Board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.*

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

L. Continuation of Expired General Permits.

An expired general permit continues in force and effect until a new general permit is issued. Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit.

M. Public Access to Information.

All information pertaining to permit processing or in reference to any source of discharge of any pollutant, shall be available to the public.

N. Permit Modification.

The permit may be modified when any of the following developments occur:

- 1. When a change is made in the promulgated standards or regulations on which the permit was based;*
- 2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;*
- 3. When the level of discharge of or management of a*

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pollutant not limited in the permit exceeds applicable Water Quality Standards or Water Quality Criteria, or the level which can be achieved by technology-based treatment requirements appropriate to the permittee;

O. Permit Termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

P. When an Individual Permit May Be Required.

The Board may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- 1. The discharger(s) is a significant contributor of pollution.*
- 2. Conditions at the operating facility change altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit.*
- 3. The discharge violates the terms or conditions of this permit.*
- 4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.*
- 5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.*
- 6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.*

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

Q. When an Individual Permit May be Requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a General Permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the General Permit and subsequent coverage under an individual permit.

R. Civil and Criminal Liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for

noncompliance.

S. Oil and Hazardous Substance Liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the Law.

T. Unauthorized Discharge of Pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

- 1. Discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or*
- 2. Otherwise alter the physical, chemical or biological properties of such State waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.*

* * * * *

Title of Regulation: VR 680-21-00. Water Quality Standards.

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

Publication Date: 6:18 VA.R. 2859-2860 June 4, 1990.

The Board is WITHDRAWING the proposed regulation entitled "Water Quality Standards" (VR 680-21-00) published in 6:18 VA.R. 2859-2860 June 4, 1990.

* * * * *

NOTICE: Due to its length, the regulation entitled "Water Quality Standards," filed by the State Water Control Board, is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary, in lieu of the full text, explaining the adopted amendments is being published. The full text of the standards is available for public inspection at the office of the Registrar of Regulations and at the State Water Control Board.

Title of Regulation: VR 680-21-00. Water Quality Standards.

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

Public Hearing Dates:
February 12, 1992 - 7 p.m.
February 13, 1992 - 2 p.m.

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February 19, 1992 - 7 p.m.
(See Calendar of Events section
for additional information)

Summary:

Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial water uses such as swimming, propagation and growth of aquatic life, and domestic water supply.

Virginia last completed a comprehensive review of the water quality standards in September 1987. In order to comply with state and federal laws, another review of the water quality standards is due. Therefore, the purpose of the proposed amendments is to make necessary revisions to the water quality standards to comply with the three-year review requirement.

In May 1990, similar amendments were proposed to meet the three-year review requirement. Those amendments were tabled by the board in September 1990 and withdrawn in December 1991. This rulemaking replaces the withdrawn proposal.

The primary objective of this triennial review is to adopt, for statewide application, standards for toxics for protection of aquatic life and human health to comply with the Clean Water Act § 303(c)(2)(B) which states that water quality standards must be adopted for § 307(a) toxic pollutants. Other changes have also been incorporated in order to meet federal requirements for antidegradation, facilitate implementation or clarify the standards and provide for variances and site specific modifications to these standards.

* * * * *

Title of Regulation: VR 680-21-00. Water Quality Standards.

VR 680-21-07.1. Special Standards and Requirements.

VR 680-21-08.15. Tennessee and Big Sandy River Basin, Clinch River Subbasin.

Statutory Authority: § 62.1-4415(3a) of the Code of Virginia.

Public Hearing Date: February 12, 1992 - 2 p.m.

(See Calendar of Events section
for additional information)

Background:

Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits

for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial water uses such as swimming, propagation and growth of aquatic life, and domestic water supply.

Summary:

The purpose of the proposed regulatory action is to establish, at the request of Appalachian Power Company (APCo), a site specific modification to the numerical water quality criteria for copper in the Clinch River between Carbo and St. Paul by amending VR 680-21-07.1 and VR 680-21-08.15. Based on studies conducted by APCo, the proposed amendments would establish an instream acute criterion for copper of 19.5 ug/l and a chronic criterion for copper of 12.4 ug/l for the impacted 12.6 miles of the Clinch River. APCo's hydroelectric power facility at Carbo would be required to upgrade the existing treatment facilities for metals removal to meet the proposed water quality standard, but the company's already planned treatment upgrade for compliance with § 304(1) of the Clean Water Act requirements should enable them to meet the proposed instream copper criteria without any additional costs.

VR 680-21-07.1. Special Standards and Requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

- y. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality standard for copper (measured as total recoverable) in this section of the Clinch River is 12.4 ug/l for protection from chronic effects and 19.5 ug/l for protection from acute effects. This site specific standard is needed to provide protection to several endangered species of freshwater mussels.

VR 680-21-08.15. Tennessee and Big Sandy River Basin - Clinch River Subbasin.

SEC.	SECTION DESCRIPTION	CLASS	SP. STDS.
21	Reserved for public water supply.		
2m	Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4 at St. Paul.	IV	y

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For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-05-13. Regulations Pertaining to Food for Human Consumption.

NOTICE: On December 5, 1991, the Virginia Board of Agriculture and Consumer Services, acting pursuant to authority contained in § 3.1-398 of the Code of Virginia, adopted as a final regulation VR 115-05-13, Regulations Pertaining to Food for Human Consumption. This regulation, adopted by the Commissioner of Agriculture and Consumer Services on October 28, 1991, appeared in the November 18, 1991, issue of the *Virginia Register of Regulations* as a final regulation adopted by the Commissioner. The regulation is not being republished; there is no difference between the regulation adopted by the Commissioner and the regulation adopted by the board.

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

Title of Regulation: VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Effective Date: February 1, 1992.

Summary:

The regulation applies directly to approximately 26,000 licensed, certified, or registered architects, professional engineers, land surveyors, landscape architects and the professional corporations and business entities that offer those professional services in Virginia. Substantive changes in the regulations after proposed regulations were submitted include:

1. The definition of the term "Professional" was added for clarification under the *Standards of Practice and Conduct* section.

2. The deadline for eliminating the oral exam from July 1, 1992, to July 1, 1993, was extended in order to better accommodate potential applicants under this exemption.

3. Fees were inserted for the various tests within the *Uniform National Examination*. Language pertaining to the schedule of fees was deleted.

VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.

PART I. GENERAL DEFINITIONS.

§ 1.1. As used in these regulations, unless the context requires a different meaning:

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision.

"Full time" means 60% or more of a licensee's gainfully employed time.

"Good moral character" shall include, but shall not be limited to, compliance with the standards of practice and conduct as set forth in these regulations.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, professional engineering, land surveying and landscape architecture. A temporary field office set up for construction-related or land surveying services is not a place of business.

["Professional" means licensed architect, licensed professional engineer, licensed land surveyor, certified landscape architect or certified interior designer.]

"Regulant" means licensee, certificate holder or registrant.

"Responsible charge" means the direct control and personal supervision of the practice of architecture, professional engineering, land surveying and certified landscape architecture.

PART II. GENERAL ENTRY REQUIREMENTS.

§ 2.1. Application requirements.

A. Fully documented applications with the noted exception shall be submitted by applicants seeking consideration for licensure, certification or registration

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with the appropriate fee(s) (check or money order only made payable to the Treasurer of Virginia) to be received in the board's office no later than 120 days prior to the scheduled examination. Applicants for the Fundamentals of Engineering examination enrolled in an ABET accredited curriculum who are within 12 months of completion of degree requirements may submit applications to be received in the board's office no later than 60 days prior to the scheduled examination. The date the completely documented application and fee are received in the board's office shall determine if an application has been received by the deadline set by the board. All applications should be completed according to the instructions contained herein. Applications are not considered complete until all required documents, including but not limited to references, employment verifications and verification of registration are received by the board. All applications, accompanying materials and references are the property of the board.

B. Applicants shall meet applicable entry requirements at the time application is made.

C. Applicants who have been found ineligible for any reason, may request further consideration by submitting in writing evidence of additional qualifications, training or experience. No additional fee will be required provided the requirements for licensure, certification or registration are met within a period of three years from the date the original application is received by the board. After such period, a new application shall be required.

D. The board may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc., to confirm or amplify information supplied. The board may also require a personal interview with the applicant.

E. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

F. Applicants shall be held to the same standards of practice and conduct as set forth in these regulations.

G. National council information.

1. Architect applicants may obtain information concerning NCARB certification and the Intern Development Program from:

National Council of Architectural Registration Boards
(NCARB)
1735 New York Avenue, N.W., Suite 700
Washington, DC 20006
(202) 783-6500

2. Engineer and land surveyor applicants may obtain

information concerning NCEES certificates from:

National Council of Examiners for Engineering and
Surveying
(NCEES)
P.O. Box 1686
Clemson, South Carolina 29633-1686
(803) 654-6824

3. Landscape architect applicants may obtain information concerning CLARB registration from:

Council of Landscape Architectural Registration Boards
(CLARB)
Suite 110, 12700 Fair Lakes Circle
Fairfax, Virginia 22033
(703) 818-1300

4. Interior design applicants may obtain information concerning NCIDQ examination and certification from:

National Council for Interior Design Qualification
(NCIDQ)
118 East 25th Street
New York, New York 10010
(212) 473-1188

§ 2.2. Determining qualifications of applicants.

In determining the qualifications of an applicant for a license as an architect, a majority vote of only the architect members of the board shall be required. In determining the qualifications of an applicant for a license as a professional engineer, a majority vote of only the professional engineer members of the board shall be required. In determining the qualifications of an applicant for a license as a land surveyor, a majority vote of only the land surveyor members of the board shall be required ; ~~and in~~ . In determining the qualifications of an applicant for certification as a landscape architect, a majority vote of only the certified landscape architect members shall be required ; , *and in determining the qualifications of an applicant for certification as an interior designer, a majority vote of only the certified interior designed members shall be required.*

§ 2.3. Good standing of comity applicants.

An applicant licensed, certified or registered to practice architecture, professional engineering, land surveying ~~or~~ , landscape architecture *or interior design* in another jurisdiction shall be in good standing in every jurisdiction where licensed, certified or registered, and shall not have had a license certificate or registration suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction prior to applying for licensure, certification or registration in Virginia.

§ 2.4. Transfer of scores to other boards.

The board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various examinations given under the board's jurisdiction to any other duly constituted registration board for use in evaluating such applicant's eligibility for registration within such board's jurisdiction or evaluation of such applicant's national certification. The applicant shall state his reason for requesting transfer and such transfer shall terminate the applicant's application pending before the board.

§ 2.5. Replacement of wall certificate.

Any licensee or certificate holder may obtain a replacement for a lost, destroyed, or damaged wall certificate only upon submission of a \$20 fee accompanied by a written request indicating that the certificate was lost, destroyed, or damaged.

§ 2.6. Modifications to examination administration.

Requests for modifications to the examination administration to accommodate physical handicaps must be made in writing and received in the board office no less than 120 days prior to the first day of the examination. Such a request must be accompanied by a physician's report or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the applicant supply further information or that the applicant appear personally before the board, or both. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board shall determine what, if any, modifications will be made.

PART III.

QUALIFICATIONS FOR LICENSING OF ARCHITECTS.

§ 3.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$ 45
Renewal	75
ARE Exam (all divisions)	435
Division A	82
Division B written	67
Division B graphic	102
Division C	140
Division D/F	77
Division E	62
Division G	83
Division H	84

Division I 81

Out of State proctor 50

§ 3.2. Character.

Applicants must be of good moral character.

§ 3.3. Education.

A. All applicants shall obtain five years of professional education or equivalent education credits. Education credits shall be calculated in accordance with Table I.

B. On or after January 1, 1993, all applicants shall hold a professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment.

§ 3.4. Experience.

A. All applicants shall have three years of training in the essential areas of architectural practice as defined below. Evidence shall be in the form of official records of a structured internship development program approved by the board, or incorporated in the candidate's application and verified by employers. Experience shall include:

1. A minimum of 18 months in the area of design and construction documents directly related to the practice of architecture; and
2. A minimum of five months in the area of construction administration directly related to the practice of architecture; and
3. A minimum of three months in the area of office management directly related to the practice of architecture.

Training credits shall be calculated in accordance with Table I.

B. The Intern-architect Development Program (IDP) shall be required of all applicants on or after January 1, 1993. An applicant shall be enrolled in IDP for a period of one year or more prior to submitting an application for examination in Virginia. IDP training requirements shall be in accordance with Part II of Table I.

§ 3.5. References.

Eligibility for licensure is determined in part by the applicant's demonstrated competence and integrity to engage in the practice of architecture. Applicants shall submit three references with the application, all of whom are licensed architects in a jurisdiction or territory of the United States. These professionals shall have personal knowledge of the applicant's architectural experience and have known the applicant for at least one year.

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References shall be current for one year.

§ 3.6. Examination.

A. All applicants for original licensing in Virginia are required to pass an Architect Registration Examination (ARE) after meeting the education and training requirements as provided in these regulations.

B. The Virginia board is a member of the National Council of Architectural Registration Boards (NCARB) and as such is authorized to administer the NCARB examinations.

C. Grading of the examination shall be in accordance with the national grading procedure administered by NCARB. The board shall adopt the scoring procedures recommended by NCARB.

D. The Architect Registration Examination (ARE) will be offered at least once a year at a time designated by the board.

E. The board may approve transfer credits for parts of the examination taken prior to the 1983 ARE. Transfer of credits will be in accordance with national standards.

F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

G. Examinees will be given specific instructions as to the conduct of each division of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

H. Scores.

Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 3.7. License by comity.

A. Any person licensed in another state, jurisdiction or territory of the United States *or province of Canada* may be granted a license without written examination, provided that:

1. The applicant meets all the requirements for licensing in Virginia or possesses an NCARB certificate; and

2. The applicant holds a currently active valid license in good standing in ~~the~~ *another state, jurisdiction of original licensure or territory of the United States or province of Canada*.

3. Applicants who were registered in their ~~base~~ *state jurisdiction of original licensure* without IDP must submit a verified record of experience in accordance with § 3.4.

~~B. The board may accept a currently valid license in good standing from the applicant's current base state if transferred from the jurisdiction of original licensure.~~

~~C. B. Applicants licensed in foreign countries may be granted a license in Virginia based on an NCARB certificate.~~

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A-9
Experience, other than A-5, A-6, A-7 or A-8
experience, directly related to onsite building
construction operations or existing buildings
physical analysis of existing buildings
0 50% 6 months
(See B-312)

A-10 Other Education or Training Experience
(See B-312)

EXPLANATION OF REQUIREMENTS

B-1 Education Credits Education Credits shall be subject to the following conditions:

- .1 No education credits may be earned prior to graduation from high school.
- .2 Applicants with the degree specified in A-1 through A-6 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the education program. Applicants without the degree specified in A-1 or A-2 may not accumulate more than 3 years of education credits in the aggregate from all degree programs.
- .3 32 semester credit hours or 48 quarter credit hours are considered to be 1 year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.
- .4 Foreign education credits will be granted only under classifications A-2 and A-4. Any cost of translation and evaluation will be borne by the applicant.

B-2 Training Credits Training credits shall be subject to the following conditions:

- B-2 -1 No training credits may be earned prior to accumulating 2 1/2 education credits.
- .2 Every applicant must earn at least one year of training credit under A-5 or A-6 and must earn it after earning 5 years of education credits.
- .3 No credit used as an education credit may be used as a training credit.
- .4 Organizations will be considered to be offices of registered architects; (a) the architectural practice of the organization in which the applicant works under the charge of a registered architect, and (b) the organization is not engaged in construction, and (c) the organization has an affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.
- .5 An organization (or an affiliate) is engaged in construction if it customarily engages in either of the following activities:
 - (a) providing labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation.
 - (b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.
- .6 A person practices as a "principal" by being a registered architect and the person in charge of the organization's architectural practice, either alone or with other registered architects.
- .7 In evaluating training credits the board may, prior to licensure, require the applicant to substantiate training experience by comparing this experience to the training requirements as indicated for the Intern-Architect Development Program (IDP). See IDP Training Requirements below.

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TABLE I.
REQUIREMENTS FOR ARCHITECTURAL LICENSURE

PART I
EDUCATION AND TRAINING REQUIREMENTS RELEASED: JANUARY, 1990;
THIS EDITION SUPERSEDES ALL PREVIOUS TABLES OF EQUIVALENTS.
INTERM-ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS REFER TO
PART II FOR THEIR TRAINING REQUIREMENTS. (Complete information
may be obtained from NCARB.)

	Education Credits		Training Credits	
	First 2 Years	Max. Credit Allowed	Max. Credit Allowed	Max. Credit Allowed

A-1 First professional degree in architecture, or credits toward the first professional degree, design program has been approved by the board for the two years after termination of enrollment.

A-2 First professional degree in architecture, program has not been approved by the board.

A-3 Bachelor degree, or credits toward that degree, in architecture, engineering, architectural technology, or in civil, mechanical, electrical engineering, or in interior architecture, each of the above being approved by the board.

A-4 Any other bachelor degree.

A-5 Diversified experience in architecture as an employee in the offices of licensed architects.

A-6 Diversified experience in architecture as a principal practicing in the office of a licensed architect with a verified record of substantial practice.

A-7 Diversified experience in architecture as an employee of an organization (other than offices of registered architects) with direct supervision of a registered architect.

A-8 Experience directly related to architectural practice, including direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, interior designer, or planner.

A-1	75%	100%	5 years	5 years	no limit
A-2	75%	75%	4 years	4 years	no limit
A-3	50%	75%	3 years	3 years	no limit
A-4			2 years	2 years	no limit
A-5	50%	50%	5 years	100%	no limit
A-6	50%	50%	5 years	100%	no limit
A-7	50%	50%	4 years	100%	2 years
A-8	0	50%	1 year	50%	1 year

See B-1-2

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Explanation of Requirements

1. WUs in categories A, B and C may be acquired only if the applicant meets the time requirements of 8-3.1 of Part 1. WUs may be acquired in category D only if the activity is substantial and continuous. Full WU credit is earned for acceptable full-time employment in the settings described in A-8 and A-9 of Part 1, and for acceptable part-time employment in the settings described in A-5 of Part 1.
2. No WUs may be acquired prior to satisfactory completion of:
 1. three years in an MAAG accredited bachelor degree program, or
 2. the third year of a four year pre-professional degree program in architecture accepted for direct entry to an MAAG accredited master's degree program, or
 3. one year in an MAAG accredited master's degree program, or
 4. 90 semester hours as evaluated by EESA in accordance with NCARB Circular of Information No. 3 of which no more than 40 semester hours are in general education category or
 5. five education credits as of June 30, 1984.
3. 32 semester credit hours or 48 quarter credit hours shall equal one year in an academic program.
3. A master's or doctoral degree in architecture (except where the degree is the first professional degree) qualifies for 235 WUs under category D.
4. An IDP applicant may earn WUs by completing NCARB-approved supplementary education programs; credit to be satisfied in its table of credits established by NCARB. Supplementary education cannot be used to satisfy the minimum requirements in training areas A-14. No WUs may be earned for supplementary education prior to meeting the requirements of A-1 of Part 1 or while enrolled in a second professional degree program in architecture.
5. The WUs which may be earned under paragraph 3 and 4 may not exceed in the aggregate 235 WUs.
6. To satisfy categories A and B of the training requirements, WUs (including WUs earned from supplementary education) in those categories must be acquired when employed in the settings described in A-5 or A-7 of Part 1.
7. A minimum of 235 WUs must be acquired in the setting described in A-5 of Part 1 after having satisfied A-1. In evaluating training, NCARB may, prior to certification, require substantiation of the quality and character of the training notwithstanding the fact that the IDP applicant has complied with the technical training requirements set forth above.
9. For detailed descriptions of the IDP training categories and supplementary education requirements, see IDP Guidelines available through NCARB.

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8-3 General Evaluation Criteria

- 8-3.1 To earn full education or training credits under A-5, A-6, A-7, A-8 and A-9 an applicant must work at least 35 hours per week for a minimum period of ten consecutive weeks under A-5 or 6 consecutive months under A-6, A-7, A-8 or A-9. An applicant may earn one-half the credit specified under A-5 for work of at least 20 hours per week in periods of 6 or more consecutive months; no credit will be given for part-time work in any category other than A-5.
2. Other education and training may be substituted for the requirements outlined above, only insofar as the board considers them to be equivalent to the required qualifications.
3. In evaluating credits, the Board may, prior to registration, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

PART 11 TRAINING REQUIREMENTS FOR INTERMEDIATE DEVELOPMENT PROGRAM (IDP) APPLICANTS

1. An IDP applicant for registration is a person who has completed the IDP training requirements listed below and satisfied the requirements of Part 1.
2. An IDP applicant must acquire a total of 700 value units (WUs) to satisfy the training requirements. One WU equals 8 hours of acceptable activity. See Part 1 for acceptable experience descriptions.

The following chart lists the IDP training categories and area and the value unit requirements.

CATEGORY A		CATEGORY B		CATEGORY C		CATEGORY D	
Design and Construction Clients	Minimum WUs Required	Office Management	Minimum WUs Required	13. Project Management	Minimum WUs Required	15. Professional and Community Service	Minimum WUs Required
1. Programming-Client Contact	10	13. Office Procedures	10	13. Project Management	10	15. Professional and Community Service	10
2. Site and Environmental Analysis	10	14. Professional Activities	10	14. Professional Activities	10	16. Office Management	10
3. Analytic Design	15	15. Office Management	10	15. Office Management	10	Minimum Total WUs Required	35*
4. Building Design	15	Minimum Total WUs Required	35*	*The differences between the minimum total WUs required in each of categories A, B and C and the sum of the minimums required for each training area within the category are the minimum number of WUs from training areas within the same category.			
5. Code Research	15						
6. Design Development	40						
7. Construction Documents	155						
8. Specifications & Materials	15						
9. Documents Checking and Coordination	15						
Minimum Total WUs Required	360						
CATEGORY 6		Related Special Activities					
Construction Administration	Minimum WUs Required	16. Professional and Community Service	Minimum WUs Required				
10. Bidding & Contract Negotiation	10	16. Office Management	10				
11. Construction Phase-Observation	15	Minimum Total WUs Required	35*				
Minimum Total WUs Required	70*						

**PART IV.
QUALIFICATIONS FOR LICENSING OF
PROFESSIONAL ENGINEERS.**

§ 4.1. Definitions.

The following definitions shall apply in the regulations relating to the licensing of professional engineers.

"ABET" means the Accreditation Board for Engineering and Technology.

"Approved engineering curriculum" means an engineering curriculum of four years or more approved by the board. ABET approved engineering curricula are approved by the board.

"Approved engineering technology curriculum" means an ABET approved engineering technology curriculum.

"Approved professional experience" means a specific record of acceptable professional experience which the board, in its discretion, judges to be pertinent in acquiring engineering skills, on engineering projects of a grade and character indicating that the applicant may be competent to practice engineering.

"Engineering examination" means an eight-hour written examination in the Fundamentals of Engineering and an eight-hour written examination in the Principles and Practice of Engineering where required.

"Engineer-in-training (EIT) designation" means the designation of an applicant who completes any one of several combinations of education, or education and experience, and passes the Fundamentals of Engineering examination.

§ 4.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

FE Application	\$ 25	
PE Application	65	
Renewal	65	
FE Examination	45	
PE Examination	100	<i>110 (7-1-92)</i>
PE Exam rescore	50	
FE/PE Out of State Proctor	50	
Oral Examination	100	<i>(This fee will be deleted as of July 1, [1992] 1993)</i>

§ 4.3. Character.

Applicants must be of good moral character.

§ 4.4. Requirements for Fundamentals of Engineering (FE) exam.

Applicants who are enrolled in an ABET accredited curriculum and are within 12 months of completion of degree requirements are eligible for the FE exam. Applications must be accompanied by a certificate of good standing from the dean of the engineering school.

All other applicants must meet the eligibility requirements in § 4.5 below.

§ 4.5. Requirements for engineer-in-training (EIT) designation.

The minimum education, experience and examination requirements for the engineer-in-training (EIT) designation are as follows:

1. An applicant who has graduated from an approved engineering or approved engineering technology curriculum of four years or more and has passed an eight-hour written examination in the Fundamentals of Engineering; or
2. An applicant who has graduated from a nonapproved engineering curriculum or a related science curriculum of four years or more, with a specific record of two or more years of approved professional experience and has passed the Fundamentals of Engineering examination; or
3. An applicant who has graduated from a nonapproved engineering technology curriculum or who has not graduated from an engineering or related science curriculum of four years or more but who, in the judgment of the board, has obtained the equivalent of such graduation as described, by self-study or otherwise, and has acquired six additional years of approved professional experience and has passed the Fundamentals of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience.

The engineer-in-training (EIT) designation shall remain valid indefinitely.

§ 4.6. Requirements for professional engineering license.

The minimum education, experience and examination requirements for licensing as a professional engineer are as follows:

1. An applicant who has graduated from an approved engineering curriculum, has passed the Fundamentals of Engineering examination or an equivalent exam, has a specific record of at least four years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination, provided, however, any applicant who has been awarded both an ABET accredited

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undergraduate engineering degree and a doctorate degree in engineering from an engineering curriculum which is ABET accredited at the undergraduate level may have the Fundamentals of Engineering examination waived; or

2. An applicant who has graduated from a nonapproved engineering curriculum, a related science curriculum of four years or more, or an approved engineering technology curriculum, who has passed the Fundamentals of Engineering examination or an equivalent exam, has acquired a specific record of at least six years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination; or

3. An applicant who has not graduated from an approved engineering curriculum of four years or more but who has obtained the equivalent of such graduation by self-study or otherwise, has passed the Fundamentals of Engineering exam or an equivalent examination, has acquired 10 years of approved professional experience, and has passed the Principles and Practice of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience; or

4. An applicant who has graduated from an engineering, engineering technology or related science curriculum of four years or more, who has acquired a specific record of 20 years or more of approved progressive professional experience on engineering projects of a grade and character which the board judges to be pertinent to acquiring professional skills, such that the applicant may be competent to practice engineering, and has passed the examination in the Principles and Practice of Engineering; or

5. An applicant who has graduated from an engineering, engineering technology, or related science curriculum of four years or more, and who has acquired a specific record of 30 years or more of approved progressive professional experience on engineering projects of grade and character which the board judges to be pertinent to acquiring professional skills, demonstrating that the applicant is eminently qualified to practice engineering, shall pass an oral examination which indicates to the board that the applicant is eminently qualified to practice engineering. If the board has any doubt concerning an applicant's eminent qualifications, the applicant shall be reclassified as an examination candidate.

Applications from individuals qualifying under this section will be accepted by the board until July 1, [1992 1993] . All applicants for oral examination must qualify on or before July 1, [1992 1993] .

§ 4.7. References.

A. References for Fundamentals of Engineering

examination.

Applicants for the Fundamentals of Engineering examination only shall provide one reference from a professional engineer, or from the dean of the engineering school or a departmental professor in the school attended by the applicant, or an immediate work supervisor. Any reference provided shall be from a person who has known the applicant for at least one year. References may not also verify professional experience.

B. References for Principles and Practice of Engineering examination.

To be eligible for admission to the Principles and Practice of Engineering examination, an applicant must indicate competence and integrity to engage in the engineering profession by submitting three references with the application, all of whom shall be licensed professional engineers in a state or territory of the United States. The professional engineers providing the references shall have personal knowledge of the applicant's engineering experience and shall have known the applicant for at least one year. References shall be no more than one year old at the time the applicant is approved to take the requisite examination. References may not also verify professional experience.

§ 4.8. Education.

Any applicant who has attended an institution not located in the United States shall have his degree evaluated by an educational evaluation service or by ABET if credit for such education is sought. The board reserves the right to reject any evaluation submitted by the applicant.

§ 4.9. Training and experience.

Professional engineering training and experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design, provided:

1. In general, experience in sales, drafting, estimating, field surveying, nonengineering military service, and inspection are considered nonqualifying;

2. Engineering experience gained by graduate engineering study or by engineering teaching as an instructor or higher in an institution approved by the board may be deemed professional experience;

3. Engineering experience gained during a board-approved co-op program may be deemed professional experience to a maximum of one year of credit;

4. The board, in its sole discretion, may permit partial credit, not to exceed 1/4 of that required, for

approved professional experience obtained prior to graduation from an engineering curriculum.

§ 4.10. Language and comprehension.

Every applicant *applying for licensure as a professional engineer* shall be able to speak and write English. An applicant from a non-English speaking country or a country wherein the primary language is other than English shall submit to the board a TOEFL (Test of English as a Foreign Language) score report with a minimum score of 560, and a TSE (Test of Spoken English) score report with a minimum score of 255. Score reports shall not be over two years old at the time of application.

§ 4.11. Examinations.

A. The Virginia board is a member of the National Council of Examiners for Engineering and Surveying (NCEES) and as such is authorized to administer the NCEES examinations.

B. The Fundamentals of Engineering examination consists of an eight-hour test period on the fundamentals of engineering, and is given semiannually at times designated by the board.

C. The Principles and Practice of Engineering examination consists of an eight-hour test period on applied engineering and is given semiannually at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

E. A candidate eligible for admission to both parts of the examination must first successfully complete the fundamentals of engineering examination before being admitted to the principles and practice of engineering examination.

F. Examinees will be given specific instructions as to the conduct of each examination at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. The oral exam shall consist of a review of the engineering background and examples of the work of the professional engineering candidate in the presence of the Professional Engineer Section of the board. This examination may encompass any facts appearing in the application and supporting papers of the candidate and such direct evidence as the candidate may desire to present to the board to substantiate the breadth and depth

of professional engineering experience, primarily in experience in engineering design and analysis.

1. Substantiating evidence shall be in the form of drawings, sketches, reports, specifications, calculations, published articles, textbooks, or other suitable information demonstrating the engineering experience of the candidate. Based upon this information, the candidate will be subject to questions regarding principles of engineering followed in the execution of such work.

2. The candidate shall demonstrate that the experience record is of a professional level and shall leave no doubt as to the ability to protect the public in the practice of engineering. Failure to demonstrate this ability shall result in reclassification.

H. Grading.

Grading of the examinations shall be in accordance with national grading procedures established by NCEES.

Each part of the written examination will have a value of 100. A passing score shall be 70 and above. Candidates will be notified of passing or failing and their actual scores.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

J. Examination reviews.

The Fundamentals of Engineering examination may not be reviewed by the candidates. Examination scores are final and are not subject to change.

Upon written request to the board within 30 days of receiving exam results, candidates for the Principles and Practice of Engineering examination will be permitted to review only their own failed examination. Score appeals may be accepted in accordance with board policy.

§ 4.12. License by comity.

A person holding a license to engage in the practice of engineering, issued to the applicant by another state, territory or possession of the United States, or the District of Columbia, based on requirements that do not conflict with and are at least as vigorous as these regulations and supporting statutes of this board, may be licensed without further examination. No person shall be so licensed, however, who has not passed a written examination in another jurisdiction which is substantially equivalent to that administered by the board.

PART V. QUALIFICATIONS FOR LICENSING AND STANDARDS OF PROCEDURE FOR LAND SURVEYORS.

Final Regulations

§ 5.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Fundamentals of Surveying	\$ 60	
Application for Principles of Surveying	95	
Renewal	155	
Fundamentals of Surveying Examination	65	80 (7-1-92)
Principles of Surveying Examination	65	85 (7-1-92)
Principles (AM) and/or Colonial Domain Exam	65	
Virginia State Examination	30	
Application for Land Surveyor B	95	
Examination for Land Surveyor B	35	
Out of State Proctor	50	

§ 5.2. Character.

Applicants must be of good moral character.

§ 5.3. Requirements for land surveyor-in-training.

The education or experience, or both, and examination requirements for land surveyor-in-training status are as follows:

1. An applicant who has graduated from a surveying or surveying technology curriculum of four years or more approved by the board as being of satisfactory standing shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

2. An applicant who has graduated from a curriculum related to surveying of four years or more as approved by the board and with a specific record of two years of progressive, approved professional experience in land surveying shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

3. An applicant who has graduated from an unrelated to surveying curriculum of four years or more as acceptable to the board with a specific record of four years of approved professional experience in land surveying of which three of these years shall be progressive, shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

4. An applicant who has graduated from a surveying curriculum of two years or more approved by the board with a specific record of six years of approved professional experience in land surveying of which four of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

5. An applicant who has successfully completed a survey apprenticeship program approved by the board with at least 480 hours of surveying related classroom instruction with a specific record of eight years of approved professional experience in land surveying of which six of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

6. An applicant who has graduated from high school with evidence of successful completion of courses in algebra, geometry and trigonometry with a specific record of ten years of approved professional experience in land surveying of which eight of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Applicants who have accumulated college credits may apply credit hours approved by the board to help meet the experience requirement. One year of experience credit will be given for 40 semester hours of approved college credit. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

§ 5.4. Requirements for a licensed land surveyor.

A land surveyor-in-training with a specific record of four years of approved professional experience, of which a minimum of three years of progressive experience has been on land surveying projects under the supervision of a licensed land surveyor, shall be admitted to an eight-hour written examination in the Principles and Practice of Land Surveying. Upon passing such examination the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified.

§ 5.5. Requirements for a licensed land surveyor B.

A. An applicant shall hold a valid license as a land surveyor and present satisfactory evidence of two years of progressive professional experience in land surveyor B professional land surveying, as defined in § 54.1-408 of the Code of Virginia, under the supervision and direction of a licensed land surveyor B or professional engineer.

B. An applicant shall also present satisfactory evidence of having passed college level courses in hydraulics, acceptable to the board.

C. An applicant shall pass an eight-hour written examination as developed by the board. Upon passing such examination the applicant shall be granted a license as a Land Surveyor B, if he is otherwise qualified.

§ 5.6. Education.

Any applicant who has attended an institution not located in the United States shall have his degree evaluated by an education evaluation service if credit for such education is sought. The board reserves the right to reject any evaluation submitted by the applicant.

§ 5.7. Experience standards.

A. "Approved professional experience" means diversified training in land surveying under the supervision and direction of a licensed land surveyor. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field. Experience may be gained either prior to or after education is obtained.

B. An applicant shall submit written verification from a licensed land surveyor of work experience from each employment engagement utilized as professional experience on forms provided by the board.

§ 5.8. Examinations.

A. The examination for land surveying under § 54.1-400 of the Code of Virginia shall consist of two parts, each part being of eight hours duration. Part I shall consist of an eight-hour examination in the Fundamentals of Land Surveying. Part II shall consist of a four-hour examination in the Principles and Practice of Land Surveying, a three-hour Colonial Domain examination, and a one-hour Virginia State examination. These examinations shall be given semiannually at times designated by the board.

B. The examination for land surveying under § 54.1-408 of the Code of Virginia (Land Surveyor B) shall be of eight hours duration and shall be given annually at a time designated by the board.

C. Unless otherwise stated, applicants approved to sit for an examination must register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

D. Grading.

Candidates shall be notified of passing or failing but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores and answer sheets. Examinations may not be reviewed.

1. Part I of the written examination shall have a value of 100. The passing grade shall be 70 or above.

2. Each portion of the Part II of the written examination shall have a value of 100. The passing grade shall be 70 or above.

3. For the Land Surveyor B examination, each applicant must obtain a minimum passing grade of 75 out of 100 for the entire eight-hour examination.

E. Reexamination.

Upon payment of a reexamination fee, an applicant may retake parts of the written examination which may have been failed. Should the applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 5.9. Licensure by comity.

A person holding a license to engage in the practice of land surveying issued on comparable qualifications from a state, territory or possession of the United States and experience satisfactory to the board, will be given comity consideration. Full credit will be given to an applicant who has passed the NCEES examinations for surveyors in other jurisdictions as required in Virginia. However, the applicant may be required to take such examinations as the board deems necessary to determine his qualifications, but in any event, he shall be required to pass a written Virginia State examination of not less than one hour in duration. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

§ 5.10. Minimum standards and procedures for land boundary surveying practice.

The following minimum standards and procedures are to be used in the Commonwealth of Virginia. The application of the ~~land surveyor's~~ *professional's* seal and signature as required by these regulations shall be evidence that the boundary survey or other land survey to be used for conveyance of title or mortgage purposes is correct to the best of the ~~land surveyor's~~ *professional's* knowledge and belief, and complies with the minimum standards and procedures.

A. Research procedure.

The ~~land surveyor~~ *professional* shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining land as it pertains to the common boundaries. The ~~land surveyor~~ *professional* shall have the additional responsibility to utilize any other available data pertinent to the survey being performed from any other source that is known. Evidence found, from all sources, shall be carefully compared with that located and found in the field survey in order to establish the correct boundaries of the land being surveyed. It is not the intent of this regulation to require the ~~land surveyor~~ *professional* to research the question of title or encumbrances on the land involved.

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B. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or boundary survey lines will be made by using a properly adjusted transit type instrument which allows a direct reading to a minimum accuracy of 30 seconds of arc or metric equivalent. The number of angles turned a given station or corner will be the number which, in the judgment of the ~~land surveyor~~ *professional*, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or boundary surveys shall be made with metal tapes which have been checked and are properly calibrated as to incremental distances, or with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane and other necessary corrections performed before using for computing purposes.

3. Field traverse and boundary closure. The maximum permissible error of closure for a field traverse in connection with a boundary survey located in a rural area shall be one foot in 5,000 feet or metric equivalent of perimeter length. The attendant angular closure shall be that which will sustain the 1/5,000 foot closure. The maximum permissible error of closure for a traverse in connection with a boundary survey located in an urban area shall be one foot in 10,000 feet or metric equivalent of perimeter length. The attendant angular closure shall be that which will sustain the 1/10,000 foot closure.

C. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats or maps, or both, used to depict the results of the boundary survey:

- a. The title of the boundary plat identifying the land surveyed and showing the district and county or city in which the land is located.
- b. The owner's name and deed book referenced where the acquisition was recorded.
- c. Names of all adjacent owners or subdivision lot designations.
- d. Names of highways and roads with route number,

railroads, streams adjoining or running through the land, and other prominent or well-known objects or areas which are informative as to the location of the boundary survey.

e. Bearings of all property lines to nearest 10 seconds, or metric equivalent.

f. Distances of all property lines to the nearest one hundredth (.01) of a foot or metric equivalent.

g. Area to the nearest hundredth (.01) of an acre or metric equivalent for rural located surveys.

h. Area to the nearest square foot or decimal of an acre or metric equivalent for urban located surveys.

i. North arrow and source of meridian used for the survey.

j. On interior surveys, a reference distance to a property corner of an adjoining owner.

k. Tax map designation of parcel number if available.

l. Each monument found and each monument set by the ~~land surveyor~~ *professional*.

m. A statement that the boundary survey shown is based on a current field survey. If the land boundaries shown on the plat are the result of a compilation from deed or plats, or both, by others, that fact will be clearly stated and the title of plat shall not represent a current boundary survey.

n. Name and address of the ~~land surveyor~~ *professional*.

D. Monumentation.

1. Each boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes in direction on the boundary with the exceptions of meanders of streams, tidelands, swamps, and roads. Where it is not feasible to set actual corners, appropriate reference markers shall be set, preferably on line, and the location of each shown on the plat or map of the boundary.

2. Original subdivision surveys shall be monumented in accordance with subdivision 1 above. Corner monuments are required to be set on subdivision lots or parcels of land to be used for conveyance of title or mortgage purposes, or, if found to be correctly in place, identified by witness stakes. The plat of such survey shall show corner monuments found and those set.

PART VI.

QUALIFICATIONS FOR CERTIFICATION OF LANDSCAPE ARCHITECTS.

§ 6.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$75		
Renewal	105		
UNE Examination	[365]	(1992) 375	(1993) 405
[Section 1	44	*	*
Section 2	57		
Section 3	100		
Section 4	110		
Section 5	97		
[Test 1		40	44
Test 2		45	49
Test 3		90	95
Test 4		85	90
Test 5		105	110
Test 6		95	100
Test 7		60	62]

Out of State Proctor 50

[* Beginning in 1992, the previous 5-section examination will change to a 7-section examination. A schedule of fees for each individual section (actual cost plus administration cost) is available from the board.]

§ 6.2. Character.

Applicants must be of good moral character.

§ 6.3. Requirements for certification.

The education or experience, or both, and examination requirements for certification as a landscape architect are as follows:

1. An applicant who has graduated from an accredited landscape architecture curriculum approved by the board shall be admitted to a written examination. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.
2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with Table II, shall be admitted to a written examination approved by the board. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.

§ 6.4. Experience standard.

Professional landscape architectural training and experience shall be progressive in complexity and based on a knowledge of natural, physical and mathematic sciences, and the principles and methodology of landscape architecture.

§ 6.5. Examination.

A. All applicants for original certification in Virginia are required to pass a Uniform National Examination (UNE) after meeting the education and experience requirements as provided in these regulations.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations.

C. The Uniform National Examination (UNE) will be offered at least once per year at a time designated by the board.

D. Grading of the examination shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.

E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

F. Examinees will be given specific instructions as to the conduct of each section of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

H. Examination reviews.

Upon written request to the board within 30 days of receiving examination results, examinees will be permitted to individually view only their own failed performance problems for informational purposes only. Examination appeals for grade changes are not permitted.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 6.6. Certification by comity.

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Any applicant who has passed an examination in another jurisdiction of the United States *or province of Canada* comparable to the examination required by these regulations or who is CLARB certified and who is currently licensed or certified in another jurisdiction of the United States *or province of Canada* may have the required Virginia examinations waived, provided that he meets all other qualifications.

DEPARTMENT OF COMMERCE
 BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS,
 LAND SURVEYORS AND LANDSCAPE ARCHITECTS

TABLE 11.

TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE
 FOR CERTIFIED LANDSCAPE ARCHITECTS.

DESCRIPTION	EDUCATION CREDITS		EXPERIENCE CREDITS	
	FIRST 2 YEARS	SUCCESSING YEARS	MAXIMUM CREDIT ALLOWED	MAXIMUM CREDIT ALLOWED
A-1. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	6 years	
A-2. Degree in landscape architecture or credits toward that degree from a non-accredited school of landscape architecture.	100%	100%	4 years	
A-3. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental sciences, approved by the Board.	75%	100%	3 years	
A-4. Any other bachelor degree, or credits toward that degree.	50%	75%	2 years	
A-5. Diversified experience in landscape architecture under the direct supervision of a certified landscape architect.			100% no limit	
A-6. Diversified experience directly related to landscape architecture when under the direct supervision of an architect, civil engineer or "credentialed" engineer.			50%	4 years

EXPLANATION OF REQUIREMENTS

8-1. Education Credits. Education credits shall be subject to the following conditions:

8-1.1. Applicants with a degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.

2. With a passing grade, 32 semester credit hours or 48 quarter credit hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

8-2. Experience Credits. Experience credits shall be subject to the following conditions:

8-2.1. Every applicant must earn at least two years of experience credit under category A-5.

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PART VII. QUALIFICATIONS FOR CERTIFICATION OF INTERIOR DESIGNERS.

§ 7.1. Definitions.

The following definitions shall apply in the regulations relating to the certification of interior designers:

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment.

"Monitored experience" means diversified experience in interior design under the supervision of a person eligible for certification as an interior designer, a certified or licensed interior designer, an architect or a professional engineer.

§ 7.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$150
Renewal	\$150

§ 7.3. Character.

Applicants must be of good moral character.

§ 7.4. Experience standard.

Experience in interior design shall be diversified in accordance with these regulations. Monitored experience gained under the supervision of a professional engineer shall be discounted at 50% with a maximum credit of six months. Periods of self-employment shall be verified with a list of projects, dates, scope of work and letters of verification by at least three clients.

§ 7.5. References.

Applicants shall submit three references from persons who know of the applicant's work and have known the applicant for at least one year. Persons supplying references may be persons eligible to be certified interior designers, certified or licensed interior designers, architects or professional engineers.

PART VIII. QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL CORPORATION.

§ 7.1. § 8.1. Definitions.

"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.

§ 7.2. § 8.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$ 90
Designation for branch office	25
Renewal	100
Renewal of branch office	25
Reinstatement of branch office	25

§ 7.3. § 8.3. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia, or, if a foreign professional corporation, shall have obtained a certificate of authority to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-544.2 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws.

The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.

2. The bylaws shall state that at least 2/3 of the capital stock must be held by persons duly licensed or certified to render the services of an architect, professional engineer, land surveyor or landscape architect. The remainder of the stock may be issued only to and held by individuals who are employees of the corporation.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or considered professional practice, or both.

D. Board of directors.

A corporation may elect to its board of directors not more than 1/3 of its members who are employees of the corporation and are not authorized to render professional services.

At least 2/3 of the board of directors shall be licensed or certified to render the services of architecture, professional engineering, land surveying or landscape architecture, or any combination thereof.

At least one director currently licensed or certified in each profession offered or practiced shall devote substantially full time to the business of the corporation to provide effective supervision and control of the final professional product.

E. Joint ownership of stock.

Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. Branch offices.

If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated in accordance with these regulations.

§ 7-4. § 8.4. Certificates of authority.

Certificates of authority shall be issued in two categories, general or limited. A general certificate of authority will entitle the corporation to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited certificate of authority will permit a corporation to practice only the professions shown on its certificate of authority, architecture, engineering, land surveying, landscape architecture or in any combination thereof.

§ 7-5. § 8.5. Foreign corporations.

In addition to these regulations, the bylaws shall state that the corporation's activities shall be limited to rendering the services of architecture, professional engineering, land surveying and landscape architecture, or any combination thereof.

The corporation shall provide the name and address of each stockholder of the corporation who will be providing the professional service(s) in Virginia and whether such stockholder is licensed or certified to perform the professional service(s) in Virginia.

§ 7-6. § 8.6. Amendments and changes.

A. Amendments to charter, articles of incorporation or bylaws.

A corporation holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of incorporation, bylaws or charter.

B. Change in directors or shareholders.

In the event there is a change in corporate directors or shareholders, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the corporation comes into compliance with these regulations. The corporation shall notify the board within 30 days of any such change.

C. Change of name, address and place of business.

Any change of name (including assumed names) address, place of business in Virginia, or person(s) in responsible charge of the profession(s) practiced or offered at each place of business shall be reported to the board within 30 days of such an occurrence.

PART VIII IX . QUALIFICATIONS FOR REGISTRATION AS A BUSINESS ENTITY.

§ 8-1. § 9.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$ 75
Designation for branch office	25
Renewal	55
Renewal of branch office	25
Reinstatement of branch office	25

§ 8-2. § 9.2. Application requirements.

A. In accordance with § 54.1-411 of the Code of Virginia, applicants shall register with the board on a form approved by the board.

B. If a partnership, a copy of the partnership agreement shall be included with the application. Not less than 2/3 of the general partners shall be licensed professionals.

C. If a corporation, the application shall include certified true copies of the articles of incorporation, bylaws and charter, and if a foreign corporation, a certificate of authority issued by the State Corporation Commission.

D. Branch offices.

If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in

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Virginia. Persons in responsible charge shall be designated in accordance with these regulations.

~~§ 8.2.~~ § 9.3. Registration certification.

The application shall contain an affidavit by an authorized official in the corporation, partnership, sole proprietorship, or other entity unit that the practice of architecture, professional engineering, land surveying or certified landscape architecture to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees identified in the application as responsible for the practice. In addition, the licensed or certified employees responsible for the practice shall sign their names indicating that they are full-time employees and in responsible charge, and that they understand and shall comply with all statutes and regulations of the board.

~~§ 8.4.~~ § 9.4. Change of status.

Any changes of status, including but not limited to change in entity, name (including assumed names), address, place of business or persons in responsible charge of the professions practiced or offered at each place of business, shall be reported to the board within 30 days of such an occurrence.

In the event there is a change in the licensed or certified employees in responsible charge, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the registration shall be automatically modified to be limited to that professional practice permitted by the remaining licensed or certified employees, or shall be automatically suspended until such time as the entity comes into compliance with these regulations.

PART ~~IX~~ X. RENEWAL AND REINSTATEMENT.

~~§ 9.1.~~ § 10.1. Expiration and renewal.

A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two-year period upon completion of a renewal application and payment of a fee established by the board. An applicant must certify that he continues to comply with the Standards of Practice and Conduct as established by the board. Registrations for professional corporations and business entities shall expire on December 31 of each odd-numbered year. *Branch offices may not renew until the main office registration is properly renewed.*

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal, accompanied by a signed statement indicating

that the applicant continues to comply with the Standards of Practice and Conduct of the board under whose authority the license, certificate or registration is issued.

C. Board discretion to deny renewal.

The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

~~§ 9.2.~~ § 10.2. Reinstatement.

A. If the renewal fee is not received by the board within 30 days following the date noted on the license, certificate or registration, a reinstatement fee equal to the renewal fee plus \$ 100 shall be required, *unless a reinstatement fee is otherwise noted.*

B. If the license, certificate or registration has expired for six months or more, but less than five years, the regulant shall be required to submit a new application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, a fee equal to the regular renewal fee plus \$ 100, times the number of renewal cycles the license, certificate or registration has expired shall be required, *unless a reinstatement fee is otherwise noted.*

C. If the license, certificate or registration has expired for five years or more, the regulant will be required to submit a new application, meet current entry requirements, and submit a fee equal to the regular renewal fee plus \$ 100, times the number of renewal cycles the license, certificate or registration has expired. *In no event shall an applicant be required to pay fees for more than four renewal cycles.* In addition, the board may require the applicant to submit to an examination.

D. Board discretion to deny reinstatement.

The board may deny reinstatement of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

E. The date the renewal application and fee are received in the office of the board shall determine whether a license, certificate or registration shall be renewed without reinstatement or shall be subject to reinstatement application procedures.

PART ~~X~~ XI. STANDARDS OF PRACTICE AND CONDUCT.

~~§ 10.1.~~ § 11.1. Responsibility to the public.

The primary obligation of the professional is to the public. If the professional judgment of the regulant is overruled under circumstances when the safety, health, property and welfare of the public are endangered, the

professional shall inform the employer or client of the possible consequences and notify appropriate authorities.

~~§ 10.2.~~ § 11.2. Public statements.

The professional shall be truthful in all professional matters.

A. When serving as an expert or technical witness, the professional shall express an opinion only when it is based on an adequate knowledge of the facts in the issue and on a background of technical competence in the subject matter. Except when appearing as an expert witness in court or an administrative proceeding when the parties are represented by counsel, the professional shall issue no statements, reports, criticisms, or arguments on matters relating to professional practice which are inspired or paid for by an interested party or parties, unless the regulant has prefaced the comment by disclosing the identities of the party or parties on whose behalf the professional is speaking, and by revealing any self-interest.

B. A professional shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.

C. A professional shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the board by any individual or business entity for licensure, certification, registration, renewal or reinstatement.

~~§ 10.3.~~ § 11.3. Conflicts of interest.

The professional shall promptly and fully inform an employer or client of any business association, interest, or circumstances which may influence the professional's judgment or the quality of service.

A. The professional shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed *in writing* to all parties of current interest.

B. The professional shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

C. The professional shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the professional is responsible.

~~§ 10.4.~~ § 11.4. Solicitation of work.

In the course of soliciting work:

1. The professional shall not bribe.

2. The professional shall not falsify or permit misrepresentation of the professional's work or an associate's academic or professional qualifications, nor shall the professional misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.

~~§ 10.5.~~ § 11.5. Competency for assignments.

A. The professional shall undertake to perform professional assignments only when qualified by education or experience and licensed or certified in the profession involved. The professional may accept an assignment requiring education or experience outside of the field of the professional's competence, but only to the extent that services are restricted to those phases of the project in which the professional is qualified. All other phases of such project shall be the responsibility of licensed or certified associates, consultants or employees.

B. A professional shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

C. The professional shall adhere to all minimum standards and requirements pertaining to the practice of his own profession as well as other professions if incidental work is performed.

~~§ 10.6.~~ § 11.6. Professional responsibility.

A. The professional shall not knowingly associate in a business venture with, or permit the use of the professional's name or firm name by any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

B. A professional who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The professional shall, upon request or demand, produce to the board, or any of its agents, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by these regulations, and shall cooperate in the investigation of a complaint filed with the board against a licensee.

D. A professional shall not knowingly use the design, plans or work of another professional without the original professional's knowledge and consent and after consent, a

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thorough review to the extent that full responsibility may be assumed.

§ 10.7. § 11.7. Good standing in other jurisdictions.

A professional licensed or certified to practice architecture, professional engineering, land surveying or landscape architecture or interior design in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction prior to applying for licensure or certification in Virginia.

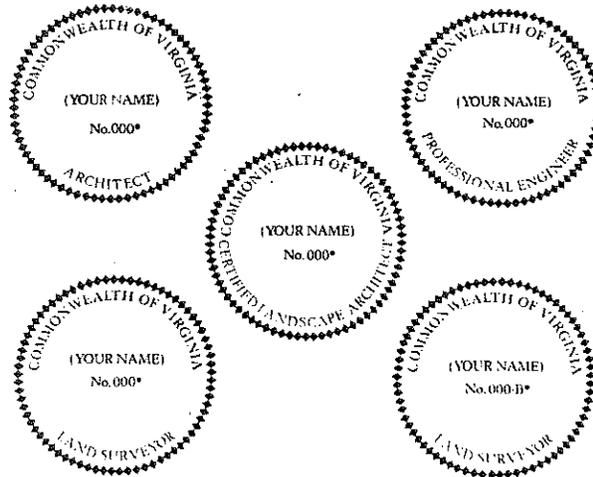
§ 10.8. § 11.8. Use of seal.

A. The application of a professional seal shall indicate that the professional has exercised complete direction and control over the work to which it is affixed. Therefore, no regulant shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person or firm unless such work was performed under the direction and supervision of the regulant while under the regulant's contract or while employed by the same firm as the regulant. If a regulant is unable to seal completed professional work, such work may be sealed by another regulant only after thorough review and verification of the work has been accomplished to the same extent that would have been exercised if the work had been done under the complete direction and control of the regulant affixing the professional seal.

B. A principal or authorized licensed or certified employee shall apply a stamp or preprinted seal to final and complete cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the regulant or someone under his direct control and personal supervision.

1. All seal imprints on final documents shall bear an original signature and date.
2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified and need not be sealed or signed.
3. All plans, drawings or plats prepared by the regulant shall bear the regulant's name or firm name, address and project name.
4. The seal of each regulant responsible for each profession shall be used.
5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.
6. The seal shall conform in detail and size to the

design illustrated below: (Size has been reduced for publication.)



* The number referred to is the six digit number as shown on the license, certificate or registration. The number is permanent.

§ 10.9. § 11.9. Organization and styling of practice.

Nothing shall be contained in the name, letterhead or other styling of a professional practice implying a relationship, ability or condition which does not exist.

An assumed, fictitious or corporate name shall not be misleading as to the identity, responsibility or status of those practicing thereunder.

§ 10.10. § 11.10. Licensee required at each place of business.

A. Corporations, partnerships, firms or other legal entities maintaining a place of business in the Commonwealth of Virginia for the purpose of offering to provide architectural, engineering, land surveying or certified landscape architectural services practiced at another location shall have an authorized full-time licensed or certified professional architect, professional engineer, land surveyor or landscape architect in that place of business.

B. Corporations, partnerships, firms or other legal entities maintaining any place of business in the Commonwealth of Virginia for the purpose of practicing architecture, engineering, land surveying or certified landscape architecture at that location, shall have in responsible charge at each place of business a full-time resident licensed or certified professional architect, professional engineer, land surveyor or landscape architect

exercising supervision and control of work in each profession being practiced.

~~§ 10.11.~~ § 11.11. Sanctions.

A. No license, certification, registration or regulant shall be fined, suspended or revoked unless a majority of the members of the entire board and a majority of the board members of the profession involved vote for the action. The board may fine, suspend or revoke any license, certification, certificate of authority or registration, if the board finds that:

1. The license, certification or registration was obtained or renewed through fraud or misrepresentation; or
2. The regulant has been found guilty by the board, or by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or found guilty regardless of adjudication or deferred adjudication of any felony or misdemeanor which, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline; or
3. The regulant is guilty of professional incompetence or negligence; or
4. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected; or
5. The regulant violates any standard of practice and conduct, as defined in these regulations; or
6. The regulant violates or induces others to violate any provision of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated or any provision of these rules and regulations.

B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments in a technical field, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be basis for revocation or suspension of the license, certification or registration.

NOTICE: The forms referenced in the subject regulations are not being published due to volume. The forms are available for public inspection at the Department of Commerce, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS FOR: Virginia State Board of Architects, Professional Engineers, Land Surveyors and Landscape Architects

- Application for Architect Registration.
- Application for Licensing as a Professional Engineer.
- Application for Licensing as a Land Surveyor.
- Application for Licensing as a Land Surveyor B.
- Application for Certification as a Landscape Architect.
- Application for a Certificate of Authority to Practice Architecture, Professional Engineering, Land Surveying and Landscape Architecture as a Professional Corporation.
- Application for Registration to Provide Professional Services as a Business Entity.
- Application for Certification as an Interior Designer.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Title of Regulation: VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

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

Effective Date: December 4, 1991.

Summary:

The amendments to the rules and regulations for allocation of federal credits of the authority make the following changes:

1. Add a provision permitting the executive director to reserve federal credits from the state's housing tax credit ceiling of a specified later taxable year to a development receiving a partial reservation of federal credits from the state's housing tax credit ceiling of the current taxable year; and
2. Add the procedure the authority will follow in monitoring for noncompliance with the provisions of § 42 of the Internal Revenue Code.

VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

§ 1. Definitions.

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

"*Applicant*" means an applicant for federal credits or state credits or both under these rules and regulations and, upon and subsequent to an allocation of such credits, also means the owner of the development to whom the federal credits or state credits or both are allocated.

"*Estimated highest per bedroom credit amount for new construction units*" means, in subdivision 7 of § 6, the

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highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per bedroom (within the low-income housing units) to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of new construction units.

"Estimated highest per bedroom credit amount for rehabilitation units" means, in subdivision 7 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per bedroom (within the low-income housing units) to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of rehabilitation units.

"Estimated highest per unit credit amount for new construction units" means, in subdivision 6 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per low-income unit to any development in the state (or if the executive director shall so determine, in each pool or subpool) composed solely of new construction units.

"Estimated highest per unit credit amount for rehabilitation units" means, in subdivision 6 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per low-income unit to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of rehabilitation units.

"Federal credits" means the low-income housing tax credits as described in § 42 of the IRC.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the IRC.

"Qualified low-income buildings" or *"qualified low-income development"* means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of federal credits thereunder.

"State code" means Chapter 1.4 of Title 36 of the Code of Virginia.

"State credits" means the low-income housing tax credits as described in the state code.

"Virginia taxpayer" means any individual, estate, trust or corporation which, in the determination of the authority, is subject to the payment of Virginia income taxes and will be able to claim in full against such taxes the amount of state credits reserved or allocated to such individual, estate, trust or corporation under these rules and regulations.

§ 2. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of federal credits pursuant to § 42 of the IRC and state credits pursuant to the state code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the applicant for federal credits or state credits or both, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the IRC and the state code.

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

Any determination made by the authority pursuant to these rules and regulations as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the authority as to such feasibility or viability.

Notwithstanding anything to the contrary herein, all procedures and requirements in the IRC and the state code must be complied with and satisfied.

§ 3. General description.

The IRC provides for federal credits to the owners of residential rental projects comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than federal credits for developments financed with certain tax-exempt bonds as provided in the IRC) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual state housing credit ceiling for such year under the IRC. An amount equal to 10% of such ceiling is set-aside for developments in which certain qualified nonprofit organizations hold an ownership interest and materially participate in the development and operation thereof. Federal credit allocation amounts are counted against the Commonwealth's annual state housing credit ceiling for federal credits for the calendar year in which the federal credits are allocated. The IRC provides for the allocation of the Commonwealth's state housing credit ceiling for federal credits to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the IRC and, in such capacity, shall allocate for each calendar year federal credits to qualified low-income buildings or developments in accordance

herewith.

Federal credits may be allocated to each qualified low-income building in a development separately or to the development as a whole in accordance with the the IRC.

Federal credits may be allocated to such buildings or development either (i) during the calendar year in which such building or development is placed in service or (ii) if the building or development meets the requirements of § 42 (h)(1)(E) of the IRC, during one of the two years preceding the calendar year in which such building or development is expected to be placed in service. Prior to such allocation, the authority shall receive and review applications for reservations of federal credits as described hereinbelow and shall make such reservations of federal credits to eligible applications in accordance herewith and, subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or development or (ii) the satisfaction of the requirements of § 42 (h)(1)(E) of the IRC with respect to such buildings or the development, the federal credits shall be allocated to such buildings or the development as a whole in the calendar year for which such federal credits were reserved by the authority.

Except as otherwise provided herein or as may otherwise be required by the IRC, these rules and regulations shall not apply to federal credits with respect to any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder.

The authority is authorized by the state code to establish the amount, if any, of state credits to be allocated to any buildings or development qualified for and claiming federal credits. The amount of state credits is calculated as a percentage of federal credits. Such percentage is established by the authority as provided herein. The state code provides for a maximum allocation of \$3,500,000 state credits in any calendar year. The state credits will be available for buildings or developments for which federal credits shall be allocated in 1990 and subsequent years or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal tax credits hereunder, for which such bonds shall be issued in 1990 and subsequent years. In the event that legislation is adopted by the General Assembly to defer the date set forth in §§ 36-55.63 A, 58.1-336 A or 58.1-435 A of the state code, then the year 1990 in the preceding sentence shall likewise be deferred and the provisions of these rules and regulations relating to state credits shall not become effective until the date set forth in such legislation.

The authority shall charge to each applicant fees in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount

permitted under the IRC. Such fees shall be payable at such time or times as the executive director shall require.

§ 4. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of these rules and regulations in the qualified allocation plan.

The executive director may from time to time take such action he may deem necessary or proper in order to solicit applications for federal credits and state credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

§ 5. Application.

Application for a reservation of federal credits or state credits or both shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC, the state code and these rules and regulations and to make the reservation and allocation of the federal credits and state credits in accordance with these rules and regulations. The application shall include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain where and what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information must be included in the application: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees,

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construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, and syndication and legal fees, development fees and other costs and fees.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. No application shall be considered for a reservation or allocation of federal credits or state credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence.

The application shall include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of federal credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of federal credits requested.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application; and any such criteria and assumptions shall be indicated on the application form or instructions.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of federal credits and state credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.

After receipt of the applications, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such individuals a reasonable

opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of federal credits and state credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

§ 6. Review and selection of applications; reservation of federal credits.

The executive director may divide the amount of federal credits into separate pools and may further subdivide those pools into subpools. The division of such pools and subpools may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, or occupants; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for federal credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. With respect to all reservations and allocations of federal credits, a "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) is to materially participate (within the meaning of § 469(h) of the IRC) in the development and operation of the development throughout the "compliance period" (as defined in § 42 (i)(1) of the IRC); and
2. With respect to only [~~these~~ those] reservations of federal credits approved or ratified by the board on or after December 18, 1990, and with respect to only those allocations made pursuant to such reservations, (i) the "qualified nonprofit organization" described in the preceding subdivision 1 is to own an interest in the development (directly or through a partnership) as required by the IRC; (ii) such qualified nonprofit organization is to, prior to the allocation of federal credits to the buildings or development, own a general partnership interest in the development which shall constitute not less than 51% of all of the general partnership interests of the ownership entity thereof (such that the qualified nonprofit organizations have at least a 51% interest in both the income and profit allocated to all of the general partners and in all items of cashflow distributed to the general partners) and which will result in such qualified nonprofit organization receiving not less than 51% of all fees paid or to be paid to all of the general partners (and

any other entities determined by the authority to be related to or affiliated with one or more of such general partners) in connection with the development; (iii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; and (iv) the executive director of the authority shall have determined that the qualified nonprofit organization was not or will not be formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools or subpools (as defined below) established by the executive director. In making the determination required by this subdivision 2 (iv), the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, and the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization holds stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for federal credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools or subpools ("nonprofit pools or subpools") of federal credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools or subpools are so established, the executive director may rank the applications therein and reserve federal credits (and, if applicable, state credits) to such applications before ranking applications and reserving federal credits (and, if applicable, state credits) in other pools and subpools, and any such applications in such nonprofit pools or subpools not receiving any reservations of federal

credits (and, if applicable, state credits) or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough federal credits then available in such nonprofit pools or subpools to make such reservations) shall be assigned to such other pool or subpool as shall be appropriate hereunder; provided, however, that if federal credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of federal credits made from any nonprofit pools or subpools or a rescission in whole or in part of an allocation of federal credits made from such nonprofit pools or subpools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools or subpools have been so assigned to other pools or subpools as described above, the executive director may, in such situations, designate all or any portion of such additional federal credits for the nonprofit pools or subpools (or for any other pools or subpools as he shall determine) and may, if additional federal credits have been so designated for the nonprofit pools or subpools, reassign such applications to such nonprofit pools or subpools, rank the applications therein and reserve federal credits to such applications in accordance with the IRC and these rules and regulations. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of federal credits reserved within such nonprofit pools or subpools is less than the total amount of federal credits made available therein, the executive director may either (i) leave such unreserved federal credits in such nonprofit pools or subpools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved federal credits to such other pools or subpools as the executive director shall designate and in which there are or remain applications for federal credits which have not then received reservations therefor in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess applications") or (iii) carry over such unreserved federal credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Any redistribution made pursuant to subdivision (ii) above shall be made pro rata based on the amount originally distributed to each such pool or subpool with excess applications divided by the total amount originally distributed to all such pools or subpools with excess applications. Notwithstanding anything to the contrary herein, no allocation of credits shall be made from any nonprofit pools or subpools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or subpools may receive a reservation or allocation of credits in any amount greater than \$500,000. For the purposes of implementing this limitation, the executive director may determine that more than one application for more than one development which he deems to be a single development shall be considered as a single application.

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The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Approval by local authorities of the plan of development for the proposed development or written evidence satisfactory to the authority that such approval is not required (15 points), proper zoning for such site or written evidence satisfactory to the authority that no zoning requirements are applicable (15 points), availability of all requisite public utilities for such site (15 points), completion of plans and specifications or, in the case of rehabilitation for which plans and specifications will not be used, work write-up for such rehabilitation (20 points multiplied by the percentage of completion of such plans and specifications or such work write-up), and building permit (10 points);

2. Firm financing commitment(s) or firm equity commitment(s), or both, which provide funds for the proposed development in an aggregate amount equal to 100% of the total development cost of the development as represented in the application (50 points). For the purpose of this subdivision 2, a firm financing commitment means a written commitment issued by a financial institution to provide permanent financing for a term of 15 years or more for the proposed development without any conditions within the sole discretion or control of the lender. The executive director may treat a reservation of funds from the Virginia Housing Partnership Fund as a firm financing commitment. A firm equity commitment means a written commitment issued by a financially sound third party syndicator or third party investor without any conditions within the sole discretion or control of such syndicator or investor. Such third party syndicator or investor shall neither be directly or indirectly related to nor controlled by the applicant. Notwithstanding the foregoing, in the case of a development comprised of 12 or fewer units only, all or a portion of the aforementioned aggregate amount of funds to be provided for the proposed development may be made available by the applicant or another party if the authority receives satisfactory evidence of the availability of those funds.

3. The quality of the proposed development's amenities, building materials and energy efficiency (the development shall be ranked by the executive director on a scale from 0 to 5 for each of the first two categories and at either 0 or 5 for the last category and the application shall be assigned points equal to the sum of the products of each such ranking multiplied by 3);

4. Evidence that the members of the development team for the proposed development have the demonstrated experience, qualifications and ability to perform their respective functions (the development team shall be ranked by the executive director on a

scale from 0 to 10, and the application shall be assigned points equal to 3 multiplied by the number of such ranking);

5. Increase in the housing stock attributable to new construction or adaptive reuse of units or to the rehabilitation of units determined by the applicable local governmental unit to be uninhabitable (20 points multiplied by the percentage of such units in the proposed development);

6. The percentage by which the total of the amount of federal credits and 50% of the amount of state credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the weighted average of the estimated highest per unit credit amount for new construction units and the estimated highest per unit credit amount for rehabilitation units based upon the number of new construction units and rehabilitations units in the proposed development (if the per unit credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per unit credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and the proposed development receives one point for each percentage point);

7. The percentage by which the total of the amount of federal credits and 50% of the amount of state credits per bedroom in such low-income housing units (the "per bedroom credit amount") of the proposed development is less than the weighted average of the estimated highest per bedroom credit amount for new construction units and the estimated highest per bedroom credit amount for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development (if the per bedroom credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per bedroom credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and the proposed development receives one point for each percentage point);

8. Letter addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for

that development." (20 points)

9. Participation in the ownership of the proposed development (either directly or through a wholly-owned subsidiary) by any organization which has its principal place of business in Virginia and which is exempt from federal taxation (10 points) or participation other than ownership in the development, construction or rehabilitation, operation or management of the proposed development by any such organization (5 points);

10. Commitment by the applicant to give first leasing preference to individuals and families on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located (5 points); and

11. Commitment by the applicant to lease low-income housing units in the proposed development only to one or more of the following: persons 62 years or older; homeless persons or families; or physically or mentally disabled persons (10 points).

With respect to items 6 and 7 above only, the term "new construction units" shall be deemed to include adaptive reuse units and units determined by the applicable local governmental unit to be uninhabitable which are intended to be rehabilitated. Also, for the purpose of calculating the points to be assigned pursuant to such items 6 and 7 above, all credit amounts shall be those requested in the applicable application, and the per unit credit amount and per bedroom credit amount for any building located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding the use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of federal credits as provided in the IRC.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application which is assigned a total number of points less than a threshold amount of 190 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of federal tax credits.

Each application to which the total number of points assigned is equal to or more than the above-described threshold amount of points shall be assigned bonus points as follows:

1. Commitment by the applicant to impose income limits throughout the extended use period (as defined in the IRC) below those required by the IRC in order

for the development to be a qualified low-income development (the product of (i) 200 points multiplied by the percentage of low-income housing units subject to such commitment and (ii) a fraction the numerator of which is the difference between 60% and the percentage of area median gross income to be used as the income limits for such units and the denominator of which is 60%; and

2. Commitment by the applicant to maintain the development as a qualified low-income housing development beyond the 15-year compliance period as defined in the IRC; such commitment beyond the end of the 15-year compliance period and prior to the end of the 30-year extended use period (as defined in the IRC) being deemed to represent a waiver of the applicant's right under the IRC to cause a termination of the extended use period in the event the authority is unable to present during the period specified in the IRC a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building (2 points for each full year in such commitment beyond such compliance period - maximum 30 points).

In the event of a tie in the number of points assigned to two or more applications within the same pool or subpool, or, if none, within the state, and if the amount of federal credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of both or, as applicable, all of the developments described therein the authority shall in order to fully utilize the amount of credits available for reservation within such pool or subpool or, if none, within the Commonwealth select one or more of the applications, by lot, to receive a reservation of federal credits in the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of federal credits then available in such pool or subpool.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools or subpools shall have been established, each application shall be assigned to a pool or subpool and shall be ranked within such pool or subpool. Those applications assigned more points shall be ranked higher than those applications assigned fewer points.

For each application which may receive a reservation of federal credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of federal credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development

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throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, and the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the federal credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines, in his sole discretion, to be reasonable. (If the applicant requests any state credits, the amount of state credits to be reserved to the applicant shall be determined pursuant to § 7 prior to the foregoing determination, and any funds to be derived from such state credits shall be included in the above described sources and uses of funds.) The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the federal credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve federal credits to applications in descending order of ranking within each pool or subpool, if applicable, until either substantially all federal credits therein are reserved or all applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of federal credits remaining in a pool or subpool after reservations have been made, "substantially all" of the federal credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools or subpools at different times for different pools or subpools and may reserve federal credits, based on such rankings, one or more times with respect to each pool or subpool. The executive director may also establish more than one round of review and ranking of applications and reservations of federal credits based on such rankings, and he shall designate the amount of federal credits to be made available for reservation within each pool or subpool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount

determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of federal credits so reserved exceed either the maximum amount permissible under the IRC or the amount of federal credits available in the pool or subpool from which such federal credits are to be reserved.

If the amount of federal credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available federal credits are to be reserved, the executive director may (i) permit the applicant to modify such proposed development and his application so as to achieve financial feasibility based upon the amount of such available federal credits or (ii), for projects which meet the requirements of § [~~42(h)(3)(E)~~ 42(h)(1)(E)] of the IRC only, reserve additional federal credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. Any such modifications shall be subject to the approval of the executive director; provided, however, that in no event shall such modifications result in a material reduction in the number of points assigned to the application pursuant to § 6 hereof. *The reservation of federal credits from the Commonwealth's annual state housing credit ceiling for the following year shall be made only to proposed developments that rank high enough to receive some federal credits from the state housing credit ceiling for the current year. However, any such reservation shall be in the sole discretion of the executive director if he determines it to be in the best interest of the Plan. In the event a reservation or an allocation of federal credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such federal credits for any federal credits reserved from the following year's annual state housing credit ceiling.*

In the event that during any round of application review and ranking the amount of federal credits reserved within any pools or subpools is less than the total amount of federal credits made available therein during such round, the executive director may either (i) leave such unreserved federal credits in such pools or subpools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved federal credits to such other pools or subpools as the executive director may designate and in which there remain excess applications or (iii) carry over such unreserved federal credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Any redistribution made pursuant to subdivision (ii) above shall be made pro rata based on the amount originally distributed to each of such pools or subpools so designated by the executive director with excess applications divided by the total amount originally distributed to all such designated pools

or subpools with excess applications. Such redistributions may continue to be made until either all of the federal credits are reserved or all applications have received reservations.

Within a reasonable time after federal credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of federal credits either of the amount of federal credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved federal credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by these rules and regulations) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved federal credits in accordance herewith.

The board shall review and consider the analysis and recommendation of the executive director for the reservation of federal credits (and, if applicable, state credits), and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the federal credits (and, if applicable, state credits) to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC (and, in the case of state credits, the state code) and these rules and regulations. If the board determines not to ratify a reservation of federal credits (and, if applicable, state credits) or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of federal credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC (and, in the case of state credits, the state code), these rules and regulations and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to § 6 hereof). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit (or a pro rata portion thereof based upon the portion of federal credits and, if applicable, state credits so allocated) shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the

executive director, the applicant is entitled to an allocation of the federal credits under the IRC, these rules and regulations and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the federal credits (and, if applicable, state credits) to such qualified low-income buildings or development without first providing a reservation of such federal credits (and, if applicable, state credits). This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of federal credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom federal credits (and, if applicable, state credits) have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC (and, in the case of state credits, the state code) or will not otherwise qualify for such federal credits (and, if applicable, state credits) under the IRC, these rules and regulations or the binding commitment, then the executive director may terminate the reservation of such federal credits (and, if applicable, state credits) and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the federal credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of federal credits (and, if applicable, state credits) as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such federal credits (and, if applicable, state credits) to other eligible applications and to allocate such federal credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the federal credits (and, if

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applicable, state credits) therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with these rules and regulations, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of federal credits (and, if applicable, state credits) applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such federal credits (and, if applicable, state credits), impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of federal credits is terminated or reduced by the executive director under this section, he may reserve, allocate, or carry over as applicable, such federal credits in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

§ 7. Reservation of state credits.

Each applicant may also request a reservation of state credits in his application for a reservation of federal credits. State credits may be reserved only to those applications (i) to which federal credits have been reserved or (ii) which represent that the applicant will be the owner of any development or buildings to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder. In the case of (ii) above, the applicant for state credits shall submit an application for federal credits (as well as for state credits), and such application shall be submitted, reviewed, and ranked in accordance with these rules and regulations; provided, however, that a reservation shall be made for the state credits only and not for any federal credits.

In order to be eligible for a reservation and allocation of state credits, the development must be owned by one of the following: (i) an individual who is a Virginia taxpayer, (ii) a corporation (other than an S corporation) which is a Virginia taxpayer, (iii) a partnership or an S corporation in which at least 75% of the state credits received by such partnership or S corporation will be allocated to partners or shareholders who are Virginia taxpayers, or (iv) any other legal entity which is a Virginia taxpayer or, in the case of an entity that is taxed on a pass-through basis with respect to tax credits, in which at least 75% of the state credits received by such entity will be allocated to Virginia taxpayers. If more than one of the foregoing shall be joint owners of the development, then the joint tenancy shall be treated as a partnership for purposes of applying the foregoing ownership test. In the case of tiered partnerships, S corporations, and other entities that are taxed on a pass-through basis with respect to tax credits, the ownership test will be applied by looking through such

pass-through entities to the underlying owners. The application shall include such information as the executive director may require in order to determine the owner or owners of the development and the status of such owner or owners or those owning interests therein as Virginia taxpayers. The prior written approval of the authority shall be required for any change in the ownership of the development prior to the end of the calendar year in which all of the buildings in such development shall be placed in service, unless the transferee certifies that it is a Virginia taxpayer or, in the case of a pass-through entity, that 100% of its owners of such entity are Virginia taxpayers.

State credits may be reserved by the executive director to an application only if the maximum amount of federal credits (determined by the use of the full applicable percentage as defined in the IRC, regardless of the amount requested by the applicant) which could be claimed for any development is determined by the executive director not to be sufficient for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. The amount of state credits which may be reserved shall be equal to the lesser of (i) the amount requested by the applicant or (ii) the amount which is necessary for such financial feasibility and viability as so determined by the executive director. Such determination shall be made by the executive director in the same manner and based upon the same factors and assumptions as the determination described in § 6 with respect to reservation of federal credits. In addition, the executive director may establish assumptions as to the amount of additional net syndication proceeds to be generated by reason of the state credits (based upon such percentage of the state credit dollar amount used for development costs, other than costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development). The amount of state credits which may be so reserved shall be based upon a percentage of the federal credits as the executive director shall determine to produce such amount of state credits.

The executive director may divide the amount of state credits into pools and may further divide those pools into subpools based upon the factors set forth in § 6 with respect to the federal credits; however, the state credits need not be so divided in the same manner or proportions as the federal credits. Applications for state credits shall be assigned points and ranked at the same time or times and in the same manner as described in § 6. The executive director shall reserve state credits to applications in descending order of ranking within each pool or subpool, if applicable, until either all state credits therein are reserved or all applications therein eligible for state credits hereunder have received reservations for state credits. Any amounts in any pools or subpools not reserved to applications shall be reallocated at the time or times and in the same manner as the federal credits, among the pools or subpools in which applications eligible for state credits hereunder shall have not received

reservations of state credits in the full amount permissible under these rules and regulations. Such allocation shall be made pro rata based on the amount originally allocated to each such pool or subpool with such excess applications divided by the total amount originally allocated to all such pools or subpools with such excess applications. Such reallocations shall continue to be made until either all of the state credits are reserved or all applications for state credits have received reservations.

Section 6 hereof contains certain provisions relating to ratification by the board of reservations of state credits, requirements for good faith deposits and contractual agreements, allocation of state credits without any prior reservation thereof, deadlines for determining the ability of the applicant to qualify for state credits, and reduction and termination of state credits. Such provisions shall be applicable to all applicants for state credits, notwithstanding the fact that the developments or buildings may be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder. In the event that any reservation of state credits is reduced or terminated, the executive director may reserve or allocate, as applicable, such state credits to other eligible applicants in such manner as he shall determine consistent with the requirements of the state code.

§ 8. Allocation of federal credits.

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of federal credits (i) is placed in service or satisfies the requirements of § 42 (h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of these rules and regulations, the binding commitment and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the federal credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, these rules and regulations, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such federal credits as described above. The applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of federal credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of federal credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income

housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds (including, without limitation, any funds to be derived from the state credits), the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the federal credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines, in his sole discretion, to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to § 6) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the federal credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in § 6 hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The amount of federal credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than \$100.

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority in such amount so as not to require under the IRC an allocation of federal credits hereunder, the executive director shall, upon timely request by the owner thereof, make the foregoing determination as of the date the buildings or the development is placed in service, and for the purpose of such determination, the owner of the buildings or development shall submit to the authority such of the above described information and documents and such other information and documents as the executive director may require. The executive director shall also determine, in accordance with the IRC and upon timely request by the owner thereof, for such buildings or development (and, in addition, for any buildings or development to be financed by certain tax-exempt bonds of an issuer other than the authority in such amount so as not to require under the IRC an allocation of federal credits hereunder) whether such buildings or development satisfies the requirements for allocation of federal credits hereunder. For the purposes of such determination, buildings or a development shall be deemed to satisfy the

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requirements for allocation of federal credits hereunder if the application submitted to the authority in connection therewith is assigned not fewer than the threshold number of points (exclusive of bonus points) under the ranking system described in § 6 hereof.

Prior to allocating the federal credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of federal credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, (i) on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period or (ii) the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC (and, in the case of an allocation of state credits, the state code) and these rules and

regulations. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC. Such commitment shall also be required with respect to any development financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder and the form thereof shall be made available to owners of such developments upon their timely request therefor.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate federal credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the federal credits, he shall allocate the federal credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the federal credits, he shall not allocate the federal credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved federal credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved federal credits, the executive director may reserve or allocate, as applicable, such unallocated federal credits to the buildings or developments of other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of federal credits (and, if applicable, state credits) for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year, and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC (and, in the case of state credits, the state code), the binding commitment, any contractual agreements between the authority and the applicant and these rules and regulations as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any federal credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of federal credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under § 6 hereof) require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the federal credits (and, if applicable, state credits), (i) to ensure that the building or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to § 6 hereof and (ii) only in the case of any buildings or development which are to receive an allocation of federal credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of federal credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the federal credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of federal credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any federal credits, the executive director may reserve, allocate or carry over, as applicable, such federal credits in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

§ 9. Allocation of state credits.

Upon the allocation of federal credits to the buildings or development described in an application which received a reservation of state credits under § 7, the executive director shall allocate state credits to such buildings or development in an amount equal to the amount of federal credits so allocated times such percentage of federal credits as shall have been determined by the executive director under § 7 but in no event shall such amount of state credits exceed the amount reserved to the application under § 7. If the amount of state credits so allocated to the buildings or development under this § 9 is less than the amount of state credits reserved to the application under § 7, then the executive director may reserve to other applications or allocate to other buildings or developments, as applicable, such unallocated state credits at such time or times and in such manner as he shall

determine consistent with the requirements of the state code.

In the case of any buildings or development to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder, the executive director shall, prior to the last day of the calendar year in which such building or development is reserved state credits, allocate state credits to the buildings or development in an amount equal to the amount of federal credits to be claimed annually by the applicant times such percentage of federal credits as shall have been determined by the executive director under § 7 but in no event shall such amount of state credits exceed the amount reserved to the application under § 7.

Prior to any allocation of state credits, the executive director may require the applicant to confirm the status of the owner or owners as Virginia taxpayers who are eligible for an allocation of state credits under § 7.

The executive director may make the allocation of state credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments, and information in the application and comply with the requirements of the IRC, the state code, and these rules and regulations.

The state credits allocated may be claimed for the first five taxable years in which the federal credits shall be claimed. The amount of state credits claimed in each such year shall be such percentage of the federal credits so claimed as shall have been established by the executive director pursuant to § 7; provided, however, that the amount of state credits which may be claimed by the applicant in the initial taxable year shall be calculated for the entire development on the basis of a twelve-month period during such initial taxable year, notwithstanding that the federal credits may be calculated on the basis of some (but not all) of the buildings in such development or on the basis of a period of less than twelve months or both; provided, further, that in no event shall the amount of state credits claimed in any year exceed the amount allocated under this § 9.

In the event that any federal credits claimed by the applicant for any taxable year in which the applicant also claimed state credits shall be recaptured pursuant to the IRC, the state credits for such taxable year shall be recaptured in an amount equal to the amount of federal credits recaptured for such taxable year times such percentage as shall have been established by the executive director pursuant to § 7. The applicants receiving state credits shall provide the authority with such information as the executive director may from time to time request regarding any recapture of the federal credits.

On or before such date each year as the executive director may require, each applicant shall apply to the authority to determine the amount of state credits which

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such applicant may claim for the applicable taxable year. Each such applicant shall submit such documents, certifications and information as the executive director may require. The authority shall certify to the Department of Taxation on forms prepared by the authority that the applicant qualified for the state credits in the amount set forth therein and shall provide such certification to the applicant. Such certification is required to be attached to the applicant's state income tax return to be filed with the Department of Taxation.

Section 8 hereof contains certain provisions relating to (i) the establishment of deadlines for submission of requests for allocation of state credits and for satisfaction of requirements of the IRC and state code and (ii) requirements for good faith deposits and contractual agreements. Such provisions shall be applicable to all applicants for state credits, notwithstanding the fact that the developments or buildings may be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder.

In the event that any allocation of federal credits shall be terminated and rescinded or cancelled pursuant to § 8 (or, in the case of any development or buildings to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder, in the event that the development shall not become a qualified low-income housing project as defined in the IRC within the time period required by the IRC or by the terms of the allocation of state credits), the executive director may also terminate and rescind or cancel the state credits and, if permitted by the state code, may reserve or allocate, as applicable, such state credits to other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the state code.

§ 10. Reservation and allocation of additional federal credits and state credits.

Prior to the initial determination of the "qualified basis" (as defined in the IRC) of the qualified low-income buildings of a development pursuant to the IRC, an applicant to whose buildings federal credits or state credits or both have been reserved may submit an application for a reservation of additional federal credits or state credits or both. Subsequent to such initial determination of the qualified basis, the applicant may submit an application for an additional allocation of federal credits or state credits or both by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any application for an additional allocation of federal credits or state credits or both shall include such information, opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings or development will be entitled to such additional federal credits or state credits or both under the IRC, the state code and these rules and regulations. The application shall

be submitted, reviewed, ranked and selected by the executive director in accordance with the provisions of §§ 6 and 7 hereof, and any allocation of federal credits or state credits or both shall be made in accordance with §§ 8 and 9 hereof. For the purposes of such review, ranking and selection and the determinations to be made by the executive director under the rules and regulations as to the financial feasibility of the development and its viability as a qualified low-income development during the credit period, the amount of federal credits or state credits, or both, previously reserved to the application or allocated to the buildings or development (or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder, the amount of federal credits which may be claimed by the applicant) shall be included with the amount of such federal credits or state credits or both so requested.

§ 11. Monitoring for IRS compliance.

All applicants who receive an allocation of federal credits are responsible for complying with § 42 of the IRC.

The federal law requires that the Commonwealth monitor projects receiving federal credits for noncompliance with the provisions of § 42 of the IRC and notify the IRS of such noncompliance with which it becomes aware.

Unless additional procedures are required by the Internal Revenue Service, applicants must submit to the authority copies of reports satisfying the reporting requirements of syndicators or public lenders such as the authority, FmHA or HUD which are involved in the project. For those projects which do not have reporting requirements imposed by a public lender or a syndicator, the authority will require the sponsor to file an annual certification of compliance with the authority.

§ 12. Notification to the Internal Revenue Service of noncompliance with IRC.

In the event that the executive director shall become aware of noncompliance by any applicant with any of the provisions of § 42 of the IRC, the executive director shall, within 90 days, notify the Internal Revenue Service of such noncompliance. Such notification shall identify the applicant and the buildings and shall describe the noncompliance.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes 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 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the

requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Code Boards will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-02-79. Virginia Occupational Safety and Health Standards for the Construction Industry - Safety Standards for Stairways and Ladders Used in the Construction Industry (1926.1050 through 1926.1060).

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: February 1, 1992.

Summary:

This standard is amended to clarify some inadvertent errors in the requirements for stairrails and handrails in § 1926.1052(c)(1) and in the requirements for spacing ladder rungs in § 1926.1053(a)(3). In § 1926.1053(c)(1), OSHA inadvertently blurred the distinction between the stairrail and handrail requirements when the proposed paragraphs (c)(1)(ii) were consolidated into a single paragraph. The consolidation of the paragraphs resulted in the omission of the requirement for at least one handrail for stairways (which had been contained in the proposal). In § 1926.1053(a)(3), a method of measuring the rung spacing for individual rung ladders was inadvertently omitted from the final rule when OSHA consolidated two measuring methods contained in the proposal into one paragraph in the final rule (56 FR 41793).

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Safety Standards for Stairways and Ladders Used in the Construction Industry (1926.1050 through 1926.1060) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-79. Virginia Occupational Safety and Health Standards for the Construction Industry - Safety Standards for Stairways and Ladders Used in the Construction Industry (1926.1050 through 1926.1060).

When the regulations as set forth in the technical amendments to the Safety Standards for Stairways and Ladders Used in the Construction Industry are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the federal term "29 CFR" shall be considered to read as "VOSH Standard."

On November 26, 1991, the Virginia Safety and Health Codes Board adopted the federal OSHA regulation concerning the Safety Standards for Stairways and Ladders Used in the Construction Industry, 29 CFR 1926.1050 through 1926.1060, as published in the Federal Register, Vol. 56, No. 164, pp. 41793-41794, Friday, August 23, 1991. The amendments as adopted are set out below.

§ 1926.1052(c)(1) now reads:

"Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with:

- (i) At least one handrail;
- (ii) One stairrail system along each unprotected side or edge.

Note: When the top edge of a stairrail system also serves as a handrail, paragraph (c) (7) of this section applies."

§ 1926.1053(a)(3) now reads:

"(a) ***

(3)(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders (including individual-rung/step ladders) shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall not be less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm), as measured between center lines of the rungs, cleats, and steps."

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COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

December 12, 1991

Ms. Carol Amato, Commissioner
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Re: VR 425-02-79 - Technical Amendments to the Safety Standards
for Stairways and Ladders Used in Construction

Dear Ms. Amato:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: State Plan for Medical Assistance Relating to Elimination of Medicaid Payment for Reserving Nursing Facility Beds for Hospitalized Patients.

VR 460-02-4.1930. Basis for Payment for Reserving Beds During a Recipient's Absence from an Inpatient Facility.

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

Effective Date: March 1, 1992.

Summary:

This amendment provides for the elimination of the Medicaid policy of paying to reserve the bed of a nursing facility resident when that resident requires hospitalization. The section of the State Plan affected by this action is Attachment 4.19 C. This regulation is responsive to the administration's directive to identify potential cost savings initiatives.

On July 1, 1982, Virginia Medicaid policy was changed to terminate the practice of paying nursing facilities for reserving the beds of nursing facility residents during their hospitalization. As an integral part of this policy, facilities were required to ensure that a former resident discharged from a hospital was given the opportunity to be readmitted to that facility at the time of the next available vacancy.

Effective July 1, 1988, Virginia Medicaid policy was changed to provide for Medicaid payment to nursing facilities in a planning district whose occupancy rate was 96% or better, in order to hold a nursing home bed for up to 12 days for a hospitalized resident. The policy was instituted to ensure more timely discharge of residents from acute care hospitals; in fact, it had the opposite effect. A study of hospital lengths of stay for nursing home residents showed that those residents not covered by the bed hold policy were discharged from the hospital on average one day sooner than those covered by the policy. The average length of stay in planning districts with bed hold days was 9.32 days, while the length of stay in planning districts without bed hold days was 8.62 days (1990 claims data). This may be attributed in part to the fact that when families were paying private rates to hold the bed, they may have communicated more often with the hospital physician and pushed for an early discharge. Another phenomenon reported to DMAS that occurred concurrent with this new policy was that hospitals were not always able to discharge first-time admissions to nursing facilities because beds were being held.

The department does not anticipate that eliminating this coverage policy will cause nursing facility residents to be displaced. When the policy of

reserving nursing facility beds for hospitalized residents was eliminated in 1982, DMAS monitored closely the outcomes for hospitalized residents in three ways: first, it checked facility compliance as part of its inspection of care activities; second, it investigated charges of noncompliance; and third, it conducted a six-year telephone survey of policy results. Only 1-2% of all hospitalized residents were displaced to another nursing facility, but all who wanted to return to their original facility later did so.

VR 460-02-4.1930. Basis for Payment for Reserving Beds During a Recipient's Absence from an Inpatient Facility.

§ 1. Payment is made for reserving beds in long-term care facilities for recipients during their temporary absence for the following purpose: A. For leaves of absence up to 18 days per year for any reason other than inpatient hospital admissions.

B. For up to 12 reserve bed days per admission when a nursing home patient requires hospitalization and the nursing home is in a planning district in which the average occupancy for all licensed and certified nursing homes is more than 96% based on a 12 month average of the occupancy reported in Medicaid nursing home cost reports filed with the Department of Medical Assistance Services as of June 30 of each year. Such reserve bed days will be applicable to hospital stays beginning on or after July 1, 1988. Payment will be made prospectively to eligible nursing homes which are licensed, certified and have a valid provider agreement as of July 1 of each year. The Department of Medical Assistance Services will notify eligible nursing homes that they may bill for up to the 12 reserve bed days for the year beginning each July 1 through June 30. Families may not be billed to reserve bed days for which the Department of Medical Assistance Services will allow payment.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: VR 672-20-32. Yard Waste Composting Facility [Regulation Regulations].

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Effective Date: January 29, 1992.

Summary:

These regulations provide for extensive exemptions from the permitting requirements contained in Part VII of the board's Solid Waste Management Regulations (VR 672-20-10) and standards contained therein to encourage the development of yard waste composting facilities. The regulations will allow for more prompt development of yard waste composting facilities by establishing technical standards and

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permitting procedures more consistent with environmental risk posed by such facilities.

These regulations define yard waste and yard waste composting, establish self-executing siting, design, construction, operation, and closure standards, and provide for permits by rule to those owners or operators of yard waste composting facilities which meet the standards. The regulations require certain minimum notification and certification procedures. The regulations allow for additional exemptions from the permit by rule requirements for owners or operators of certain yard waste composting facilities.

Several changes have been made to the proposed regulations. The most significant change was the addition of exemptions to the permit by rule requirements established in these regulations. The regulations now allow certain exemptions for owners or operators of agricultural operations and other owners of real property. The regulations have also been amended to include provisions for siting yard waste composting facilities at closed solid waste disposal facilities. The regulations have also been amended by the addition of several definitions and reduced siting standards.

Other changes were made to clarify the enforcement capabilities of the Virginia Waste Management Board and the Department of Waste Management as they pertain to yard waste composting facilities operating under the provisions of these regulations. Amendments were also made to explain the applicability of other regulations of the board.

In addition, changes were made in the use of terms throughout the text of the regulations.

VR 672-20-32. Yard Waste Composting Facility Regulation.

Preface:

[~~This regulation provides~~ These regulations 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, 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.

PART I. DEFINITIONS.

§ 1.1. Definitions incorporated by reference.

The definitions set out in Part I of the Virginia Solid Waste Management Regulations (VR 672-20-10) are incorporated by reference.

§ 1.2. Definitions.

In addition to the definitions incorporated by reference, the following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

["Agricultural operation" means any operation devoted to the bona fide production for sale of crops, or animals, or fowl, including but not limited to the production for sale of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and trees in such quantity and so spaced and maintained as to constitute a forest area.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.]

"Disclosure statement" means a sworn statement or affiliation, in such form as may be required by the director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other

jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" means both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with

or for one of those governmental entities.

"Landscape maintenance" means the care of lawns, shrubbery, and vines, and includes the pruning of trees.

["Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble or suspended degradation products of waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a waste water collection system is regulated as industrial waste water.]

"Permit by rule" means provisions of the regulation stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

["Putrescible waste" means solid waste which contains organic material capable of being decomposed by micro-organisms and which causes odors.

"Runoff" means the surface flow of water, waste water or leachate from any part of a yard waste composting facility that has come in contact with yard waste.]

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the [~~compost~~ yard waste composting] facility.

"Yard waste" means that fraction of municipal solid waste that consists of grass clippings, leaves, brush, and tree prunings arising from general landscape maintenance.

["Yard waste compost" means a stabilized organic product produced from yard waste by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land so that it does not pose a present or potential hazard to human health or the environment.

"Yard waste composting" means the controlled aerobic decomposition process of yard waste by which yard waste compost is produced.

"Yard waste composting facility" means an engineered facility for composting of yard waste which is so located, designed, constructed, and operated to isolate, process, and manage the yard waste and yard waste compost so that it does not pose a present or potential hazard to human health or the environment.]

PART II.

AUTHORITY, PURPOSE AND APPLICABILITY.

§ 2.1. Authority.

[~~This regulation is~~ These regulations are] promulgated pursuant to §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia, which authorizes the Virginia Waste

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Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of the Virginia Waste Management Act and the federal acts.

§ 2.2. Purpose.

The purpose of [~~this regulation~~ these regulations] is to establish appropriate standards for siting, design, construction, operation and closure, and expedited permitting procedures pertaining to certain yard waste [~~compost~~ composting] facilities.

§ 2.3. Applicability.

A. [~~This regulation applies~~ These regulations apply] to all persons who manage yard waste [~~composting~~] facilities to produce compost provided that:

1. The [yard waste] composting process employed is that with prior operational performance in the United States;

2. The yard wastes are not combined with other refuse, sludges, or animal manures [except that the materials which are excluded from regulation as solid waste under § 3.2 A 6 of the Solid Waste Management Regulations (VR 672-20-10) may be combined with yard waste for the purpose of producing yard waste compost under the provisions of § 2.4 of these regulations] ; and

[(NOTE: The Virginia Solid Waste Management Regulations (VR 672-20-10) exclude from the definition of solid waste materials generated by any of the following which are returned to the soil: the growing and harvesting of agricultural crops, and the raising of animals (i.e., animal manures). Therefore, owners or operators of agricultural operations may compost these materials with yard waste.)]

3. The yard waste is not managed atop a partially or fully closed solid waste disposal unit at a permitted solid waste disposal facility [except as provided for in § 3.1 E of these regulations] .

B. Persons who do not meet the conditions of § 2.3 A [and are not otherwise exempted under § 2.4 of these regulations] shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations (VR 672-20-10).

[(NOTE: These regulations are not applicable to facilities that produce products other than compost from yard waste.)]

[§ 2.4. Exemptions.

The following persons shall be exempt from other provisions of these regulations providing the yard waste composting facility on the owner's or operator's property.

does not pose a present or potential hazard to human health or the environment.

A. Agricultural operation owners or operators.

1. The owners or operators of agricultural operations who compost only yard waste generated on or by said operations shall be exempt from all other provisions of these regulations.

2. The owner or operator of an agricultural operation which accepts yard waste generated off-site shall be exempt from all other provisions of these regulations provided that prior to the receipt of yard waste generated off-site the owner or operator of the agricultural operation submits to the director a certification letter which shall include:

a. The name and address of the agricultural operation owner or operator;

b. The name and address of the agricultural operation;

c. The location of the yard waste composting site at the address specified in § 2.4 A 2 b;

d. A statement by the owner or operator that the owner or operator agrees to receive only yard waste or the materials which are excluded from regulation as solid waste under § 3.2 A 6 of the Solid Waste Management Regulations (VR 672-20-10);

e. A statement by the owner or operator that all yard waste generated off-site that is received will be composted and that all compost produced from the yard waste generated off-site will be utilized at the address specified in § 2.4 A 2 b within 18 months of receipt;

f. A statement by the owner or operator that the total amount of yard waste received from off-site generators will not exceed 6,000 cubic yards in any 12-month period;

g. A statement by the owner or operator that the yard waste composting site at the agricultural operation specified in § 2.4 A 2 b is not within an area subject to base floods;

h. A statement by the owner or operator that the yard waste composting site at the agricultural operation specified in § 2.4 A 2 b is not within 24 inches of the seasonal high water table; and

i. The following statement signed by the owner or operator:

"I certify that I have personally examined and am familiar with the information submitted in this letter.

and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

3. In the event that an owner or operator of an agricultural operation operating under this exemption violates any provisions of this exemption, the owner or operator shall lose this exemption and become subject to all the requirements of these regulations.

B. Owners or other persons authorized by the owner of real property who receive yard waste generated off-site for the purpose of producing yard waste compost on said property shall be exempt from all other provision of these regulations provided that:

1. Not more than 500 cubic yards of yard waste generated off-site are received at the owner's said property in any 12-month period;
2. No compensation will be received, either directly or indirectly, by the owner or other persons authorized by the owner of said property from parties providing yard waste generated off said property; and
3. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage or disposal are satisfied.

C. Owners or other persons authorized by the owner of real property who compost only the yard wastes generated on said property shall be exempt from all other provisions of these regulations providing that:

1. All yard waste compost produced is utilized on said property;
2. No yard waste or other waste material generated from sources other than said property is received; and
3. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage or disposal are satisfied.]

§ [~~2.4~~ 2.5.] Relationship to other regulations.

A. These regulations do not affect the Virginia Solid Waste Management Regulations (VR 672-20-10), except that persons subject to and in compliance with these regulations are exempt from the Solid Waste Management Regulations only for those activities covered by these regulations.

B. [The requirements of the Financial Assurance Regulations for Solid Waste Management Facilities (VR 672-20-1) apply to the owners and operators of yard waste composting facilities. Persons subject to these regulations are subject to applicable provisions of the Financial Assurance Regulations of Solid Waste Facilities (VR

672-20-1).

C. All existing yard waste composting facilities that operated under a permit by rule under the provisions of the Yard Waste Composting Regulation (VR 672-20-31) may continue to operate under the terms of that permit by rule until its closure plan is amended, terminated, or the owner or operator otherwise loses permit by rule status.]

PART II. FACILITY STANDARDS.

§ 3.1. Siting.

A. Yard waste composting facilities shall not be sited or constructed in areas subject to base floods. No facility shall be closer than 50 feet to any regularly flowing stream.

B. Yard waste composting facilities shall not be located in areas which are geologically unstable or where the site topography is heavily dissected.

C. Acceptable [yard waste composting facility] sites must have sufficient area and terrain to allow for [control and] proper management of runoff, and leachate.

D. [A The boundary of a] yard waste composting facility shall not be located within 200 feet of any [residential area dwelling], a health care facility, school, or similar type of public institution. The director may reduce this set-back distance if the owner or operator successfully shows that a nuisance will not be created owing to the operation of such facility.

E. A yard waste composting facility shall not be located atop a closed waste disposal unit located on property whose deed or some other instrument which is normally examined during title searches contains a notation required under § 5.1 E 8, 5.2 E 6, or 5.3 E 7 of the Virginia Solid Waste Management [Regulation Regulations] (VR 672-20-10) [: with the following exceptions:]

[1. For a closed waste disposal unit at a solid waste management facility closed prior to December 1988 the following conditions shall apply:

a. The yard waste composting facility does not pose a present or potential hazard to human health or the environment;

b. All siting, design and construction, operating and closure standards of Part III have been satisfied;

c. The owner or operator of the yard waste composting facility successfully satisfies all provisions of Part IV of these regulations.

2. For a waste disposal unit closed prior to December

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1988 which is located at a solid waste management facility for which a permit has been issued and that is operating under the provisions of the Solid Waste Management Regulations (VR 672-20-10) the following conditions shall apply:

a. The yard waste composting facility does not pose a present or potential hazard to human health or the environment;

b. All siting, design and construction, operating and closure standards of Part III have been satisfied;

c. The owner or operator of the yard waste composting facility successfully demonstrates to the director that all provisions of Part IV of these regulations have been satisfied.

d. The closure plan for the solid waste management facility is amended to incorporate the operating and approved closure plans of the yard waste composting facility. The owner or operator of the solid waste management facility must request the amendment to the solid waste facility closure plan in accordance with § 5.1 E of the Solid Waste Management Regulations (VR 672-20-10).

3. For waste disposal units closed after December 1988 and under the provisions of the Solid Waste Management Regulations (VR 672-20-10) the following conditions shall apply:

a. The yard waste composting facility does not pose a present or potential hazard to human health or the environment;

b. The existing permit issued for the solid waste management facility at which the closed waste disposal unit is located is amended to include any changes that may be required as a result of the operation of the yard waste composting operation. The owner or operator must request the permit amendment in accordance with Part VII of the Solid Waste Management Regulations (VR 672-20-10).]

§ 3.2. Design and construction.

A. A handling area and equipment shall be provided to segregate waste other than yard waste and noncompostable components in the yard waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

B. If the yard waste [~~compost~~ composting] facility is located in any area where the seasonal high water table lies within [~~five feet~~ 24 inches] of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent entry of runoff or escape of runoff, leachate, and other liquids, and a sump with

adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey liquids to a wastewater treatment [(including recirculation)], disposal or holding facility.

C. Sound engineering controls shall be incorporated into design of [yard waste composting] facilities located on sites with:

1. Springs, seeps, and other groundwater intrusions;

2. Gas, water, or sewage lines under the active areas, or electrical transmission lines above or below the active areas.

D. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent runoff, collect runoff, and provided with a drainage system to route the collected runoff to a wastewater storage, treatment [(including recirculation)], or disposal facility.

E. A buffer zone with the minimum size of 100 feet shall be incorporated in the [yard waste composting] facility design between [the] facility boundaries and process operations.

F. Roads serving the unloading, handling, composting, and storage areas shall be [~~of all-weather construction~~ usable under all weather conditions] .

§ 3.3. Operations.

A. The addition of any other solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, or other municipal solid waste to the yard waste received at the [yard waste composting] facility is prohibited [, except that the materials which are excluded from regulation as solid waste under § 3.2 A 6 of the Solid Waste Management Regulations (VR 672-20-10) may be combined with yard waste for the purpose of producing yard waste compost under the provisions of §§ 2.3 and 2.4 of these regulations] .

B. [~~Waste~~ Solid waste] other than yard waste and [~~noncompostable yard waste components~~ noncompostable components in the yard waste] shall be segregated from the compostable yard waste and promptly removed from the [~~site~~ yard waste composting facility] for proper management at a [solid waste management] facility permitted by the department. Segregated solid waste shall not remain at the [~~compost~~ site yard waste composting facility] at the end of the working day unless it is stored in containers specifically designed for storage of solid waste. [Containerized putrescible waste shall not remain at the yard waste composting facility for more than seven days. Containerized nonputrescible waste shall be collected for disposal at intervals of less than 30 days.]

C. Access to a yard waste [~~compost~~ composting] facility shall be permitted only when an attendant is on duty.

D. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards.

E. The [owner or] operator shall prepare, implement, and enforce a safety program designated to minimize hazards.

F. Open burning shall be prohibited.

G. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

H. Leachate or other runoff from a [~~compost~~ yard waste composting] facility shall not be permitted to drain or discharge directly into surface waters [~~except when authorized under a Virginia NPDES Permit issued pursuant to the State Water Control Board regulation VR 680-14-01, NPDES Program or otherwise approved by that agency~~] .

I. Designed buffer zones shall be maintained.

§ 3.4. Closure.

The owner or operator shall close his [yard waste composting] facility in a manner that minimizes the need for further maintenance. All waste and residues, including unfinished compost, shall be removed and disposed in a permitted [solid waste management] facility. Any finished compost present at the time of closure shall be removed and marketed or utilized in accordance with the operational plan for the facility, or disposed in a permitted [solid waste management] facility.

A. Closure plan and amendment of plan.

1. The owner or operator of a [~~compost~~ yard waste composting] facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of a final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

2. The closure plan shall be submitted to the department prior to the construction and operation of the [~~compost facility~~ yard waste composting facility, unless the owner or operator is exempt from the requirement of the Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1), in which case the closure plan shall be submitted no later than 30 days from the date the yard waste composting facility commences operation.] The department shall review each closure plan no later than [~~60~~ 90] days from receipt. If the department finds a plan to be deficient, it shall cite the reasons for the finding and state

what amendments are necessary. If found to be deficient, the closure plan shall be amended by the owner or operator within 90 days of the director's finding. If the amended closure plan continues to be deficient, the department will amend the plan to meet the closure performance requirements [within 90 days] .

3. The owner or operator may amend his closure plan at any time during the active life of the [yard waste composting] facility. The owner or operator shall so amend his plan at any time changes in operating plans or facility design affects the closure plan. Amended plans shall be submitted to the department within 15 days of such changes. The director may require that amended plans be modified to meet the closure requirements.

4. At any time during the operating life of the [yard waste composting] facility, the closure plan shall be made available to the department upon request of the director.

5. The owner or operator shall submit an updated closure plan to the director at least 180 days before the date he expects to begin final closure. The director will modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved, the owner or operator shall modify the plan to meet the closure requirements. If an owner or operator plans to begin closure within 180 days after the effective date of these regulations, he shall submit the necessary plans on the effective date of these regulations.

B. Time allowed for closure.

The owner or operator shall complete closure activities in accordance with the approved closure plan and within 12 months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activity will, of necessity, take longer than 12 months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive [yard waste composting] facility.

C. [Posting of notification.]

At the beginning of the closure activities, the owner or operator shall post at least one sign notifying all persons of the closing, and providing a notice of prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

D. Evidence of proper closure.

A yard waste [~~compost~~ composting] facility shall be deemed properly closed when the above actions have been

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taken by the owner or operator and a representative of the department verifies same by an on-site inspection and provides a written confirmation that closure has been completed properly.

PART IV. FACILITY PERMIT BY RULE.

§ 4.1. Permit by rule provisions.

Notwithstanding any provisions of Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10), the owner or operator of a [~~component facility~~ yard waste composting facility] which accepts only yard wastes as defined in Part I of [~~this regulation~~ these regulations] shall be deemed to have a solid waste management facility permit if the owner or operator:

1. Demonstrates to the director the legal control over the site for the useful life of the [yard waste composting] facility. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true copy of a deed shall be provided to the department before construction begins.

2. Notifies the director of his intent to operate such a facility and provides the department:

a. The certificate from the governing body of the county, city, or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances; and

b. A disclosure statement as defined in Part I of [~~this regulation~~ these regulations] as required under § 10.1-1408.1 B of the Code of Virginia.

3. Provides the director with a certification that the facility meets the siting standards of § 3.1 of [~~this regulation~~ these regulations] .

4. Furnishes to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the facility has been designed and constructed in accordance with the standards of § 3.2 of [~~this regulation~~ these regulations] . Such certificate shall contain no qualifications or expectations from the requirements and plans.

5. Submits to the director an operational plan describing how the standards of § 3.3 of [~~this regulation~~ these regulations] will be met and the procedure for marketing or utilizing the finished compost.

6. Submits to the director [~~an approved a~~] closure plan describing how the standards of § 3.4 of [~~this regulation~~ these regulations] will be met.

7. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations [~~for of~~] Solid Waste Facilities (VR 672-20-1).

§ 4.2. Change of ownership.

A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner [or operator] shall notify the department of the sale and fulfill all the requirements contained in § 4.1 of [~~this regulation~~ these regulations] with the exception of § 4.1 G of [~~this regulation~~ these regulations] within 30 days of the date of the sale. If required by the Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1), financial assurance proof shall be posted by the new owner or operator within 30 days from the date of the sale; provided however, that until the actual posting of such financial assurance proof, the old owner or operator shall not be relieved of his responsibility to post financial assurance] . Upon presentation of the financial assurance proof required by § 4.1 G of [~~this regulation~~ these regulations] by the new owner [or operator] , the department will release the old owner [or operator] from his [closure and financial] responsibilities [under the Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1)] and acknowledge existence of the new permit by rule in the name of the new owner [or operator] .

§ 4.3. Facility modifications.

The owner or operator of a yard waste [~~compost~~ composting] facility may modify the design and operation of the facility by furnishing the department a new certificate required by § 4.1 D and a new operational plan required by § 4.1 E. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall submit an amended closure plan in accordance with the requirements of § 3.4. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations [~~for of~~] Solid Waste Facilities (VR 672-20-1).

PART V. ENFORCEMENT.

§ 5.1. Loss of permit by rule status.

In the event that a yard waste [~~compost~~ composting] facility operating under a permit by rule violates any provisions of [~~this regulation~~ these regulations], except subsection B, C, D, E, F, G, H, or I of § 3.3] , the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in § 2.6 of the Virginia Solid Waste Management Regulations (VR 672-20-10) and shall be required to either obtain a new permit as required by Part VII or close under Part V o

VI of those regulations, as applicable.

§ 5.2. Termination.

[*The department* In addition to the grounds identified in § 10.1-1409 of the Code of Virginia, the director] shall terminate permit by rule and shall require closure of the facility whenever he finds that:

1. As a result of the changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;

2. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under [~~this regulation~~ these regulations], or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement; or

3. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction; or have been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner.

[§ 5.3. Enforcement.

Loss or termination of a permit by rule under these regulations shall not preclude additional action for remediation or enforcement, including (without limitation) the assessment of civil charges or civil penalties, as is otherwise authorized by law.]

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-07. Oil Discharge Contingency Plans and Administrative Fees for Approval.

Statutory Authority: §§ 62.1-44.34:15 and 62.1-44.34:21 of the Code of Virginia.

Effective Date: January 29, 1992.

Summary:

In accordance with § 62.1-44.34:15 of the Code of Virginia, the State Water Control Board has adopted regulations requiring all facilities in the Commonwealth of Virginia having an aggregate above ground maximum storage or handling capacity of

equal to or greater than 25,000 gallons of oil and to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil to file with and have approved by the board an oil discharge contingency plan.

The regulation establishes the requirements for facility and tank vessel contingency plans. Plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety. The oil discharge contingency plans will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, cleanup and mitigate an oil discharge within the shortest feasible time.

In accordance with § 62.1-44.34:21 of the Code of Virginia the regulation establishes a fee schedule for approval of an oil discharge contingency plan sufficient to meet, but not exceed, the costs of the board related to implementation of § 62.1-44.34:15.

In consideration of all comments received during the comment period and at the public hearings, the regulations were revised as follows:

Since a pipeline was included under the definition of a facility, the board felt compelled to define a pipeline for the purpose of this regulation only.

The definition of oil was modified to exempt those products regulated under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This will bring the definition more into alignment with that under the federal Oil Pollution Act of 1990.

To allow operators of facilities and tank vessels more time to prepare the contingency plans, the board moved the submittal date to May 1, 1991, in lieu of April 1, 1991.

The acceptance of a letter of understanding between an operator and a pollution cleanup contractor or membership in a cleanup cooperative was allowed to provide for the identification of personnel and equipment necessary to remove, to the maximum extent possible, a worst case discharge.

The board clarified the natural resources required to be identified and a requirement for specific facilities to conduct groundwater characterization studies and provide for leak detection. The section was also clarified for its application to pipeline operators.

Inventory control procedures were clarified and leak detection addressed to ensure the operator of a facility or tank vessel could provide for the detection of a discharge of oil in the shortest feasible time.

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Establishment of groundwater protection measures was added and the board has authority to deem these procedures acceptable or not. The regulations also require tank, piping and equipment testing at the time of a discharge.

The final regulations extended the approval period from 36 months to 60 months and reduced the fees by approximately 32-35%.

VR 680-14-07. Oil Discharge Contingency Plans and Administrative Fees for Approval.

§ 1. Definitions.

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

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this regulation only, this definition does not include [nonpetroleum hydrocarbon-based] animal and vegetable oils [, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that act] .

"Operator" means any person who owns, operates, charters [by demise] , rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

[*"Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated*

with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.]

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this regulation, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil [; # . It] does not include vessels carrying oil in drums, barrels, [~~on deck~~] portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 2. Applicability.

These Oil Discharge Contingency Plan requirements apply to all facilities in the Commonwealth of Virginia having an aggregate above ground maximum storage or handling capacity of equal to or greater than 25,000 gallons of oil [~~and~~ (excluding oil in drums, barrels and portable tanks providing no single container exceeds 110 gallons),] to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil [and to all pipelines having an average daily pumped through volume (throughput) of 25,000 gallons or more of oil] .

§ 3. Compliance dates.

This regulation shall be effective 30 days after publication in the Virginia Register. Contingency plans must be submitted to the board no later than [~~April 1~~ May 1] , 1992. [An operator of an existing facility shall comply with the groundwater characterization study required by § 5 A 13 by submitting existing groundwater data as part of the plan and shall submit a completed study by April 1, 1993. The operator of a facility commencing operation after the effective date of this regulation shall submit the groundwater characterization study with the contingency plan.] Oil discharge contingency plans shall be approved by the board no later than July 1, 1992. Because of time problems inherent in initial implementation, the board may issue a conditional letter of approval pending review provided that the initial submission is a complete application and contains all requirements of §§ 5 and 6 of this regulation.

§ 4. Statement of purpose.

The purpose of this regulation is to provide guidance for the development of facility and tank vessel contingency plans. Plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety. The oil discharge contingency plans will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, cleanup and mitigate an oil discharge within the shortest feasible time.

§ 5. Contingency plan contents.

A. Facility oil discharge contingency plans shall provide for the use of the best available technology [(economically feasible, proven effective and reliable and compatible with the safe operation of the facility)] at the time the plan is submitted for approval and, [in order to be approvable, shall contain,] at a minimum, [contain] the following [information requirements] :

1. The name of the facility, geographic location and access routes from land and water if applicable.

2. The name(s) of the operator(s) of the facility including address and phone number.

3. A physical description of the facility including a plan of the facility showing, if applicable, oil storage areas, transfer locations, control stations, above and below ground [oil transfer] piping within the facility boundary (and including adjacent easements and leased property), monitoring systems, leak detection systems and location of any safety protection devices;

4. [A copy of the material safety data sheet (MSDS) or its equivalent] for each oil [, or groups of oil with similar characteristics,] stored, transferred or handled at the facility [. To be equivalent, the submission must contain the following] :

a. Generic or chemical name of the oil;

b. Hazards involved in handling the oil; and

c. A list of fire fighting procedures and extinguishing agents effective with fires involving each oil [or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures] .

5. The maximum storage or handling capacity of the facility and the individual tank capacities, or in the case of a pipeline, the average daily [volume pumped through the pipeline throughput of oil] .

6. A complete listing, including 24 hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

7. The position title of the individual(s) responsible for

making the required notifications and a copy of the notification check off list.

8. The position title [, address and phone number] of the individual(s) authorized to act on behalf of the operator to implement containment and cleanup actions. [This individual shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.]

9. [Identification and insurance by contract or other means acceptable to the board, of the availability of private personnel and equipment designated within the area to provide assistance in event of a discharge which cannot be contained and cleaned up by facility personnel. This contract or agreement shall ensure a certain response within the shortest feasible time. The position title of the individual(s) designated by the operator to ensure compliance, during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.]

10. [Inventory of containment equipment including specification of quantity, type, location, instructions for use, time limits for gaining access to the equipment, and identification of facility personnel trained in its use. Identification and insurance by contract or other means acceptable to the board, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The board will accept a letter of understanding between the operator and the response contractor(s) which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by § 5 A 12, shall be included unless these capabilities are already on file with the board.]

11. Assessment of the worst case discharge including measures to limit the outflow of oil, response strategy [; and] operational plan [and spill trajectories] . For the purpose of this regulation, the worst case discharge is [a complete the instantaneous] release of the [volume of the] largest tank on the facility [(125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike)] during adverse weather conditions. [Facilities with multiple tanks shall add 25% to the largest tank volume. Facilities shall take into consideration that due to hydraulic pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge

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calculated using the maximum pressure, velocity, elevation, largest pipe size and pipeline location. The board will consider submission of other worst case scenarios on a facility specific basis.]

12. [~~A determination of natural resources at risk, for protection and means of protecting these resources.~~ Inventory of facility containment equipment including specification of quantity, type, location, time limits for gaining access to the equipment, and identification of facility personnel trained in its use.]

13. [~~A description of the disposal procedures for both liquid and solid wastes generated during a response.~~ These disposal procedures shall comply with applicable federal, state and local requirements. Identification and location of natural resources at risk (including, but not limited to, surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Historic Landmarks), priorities for protection and means of protecting these resources.

a. In addition to the abovementioned requirements set forth in this subsection, the operator of a facility with an aggregate aboveground storage or handling capacity greater than 1,000,000 gallons of oil shall conduct a groundwater characterization study within the geographic boundaries of the facility to be submitted as part of the contingency plan. The operator of such a facility shall utilize upgradient and downgradient monitoring wells to satisfy this requirement. At the time of a discharge, the operator of such a facility shall conduct further characterization of the groundwater as required by the board.

b. For purposes of satisfying the requirement to identify and locate natural resources at risk set forth in this subsection, the operator of a pipeline shall identify surface waters as indicated on the applicable USGS quadrangle maps, public water supplies, state or federal wildlife management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks which could reasonably be expected to be impacted by the discharge. At the time of a discharge, the operator of a pipeline shall conduct a complete groundwater characterization study as required by the board and identify other natural resources at risk including public and private wells or springs which could reasonably be expected to be impacted by the discharge.]

14. [~~A determination~~ Identification and location] of any municipal or other services (water/sewerage) at

risk, notification procedures applicable and means of protection of these services. [The identification and location of all municipal services shall include those services for which official records are available. The operator of a pipeline shall determine which sections of the system are located in areas that would require an immediate response by the operator to prevent hazards to the public if a discharge occurred.]

15. If applicable, this plan shall include the facility's responsibility for responding to a discharge from a vessel moored at the facility and shall identify the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously.

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator [to mitigate or prevent the discharge, or the substantial threat of a discharge] .

17. [~~A description of the~~ The] facility's oil inventory control procedures. [Facilities shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. Establishment of a system for early detection of a discharge to groundwater, utilizing upgradient and downgradient monitoring wells or other groundwater protection measures acceptable to the board. Operators subject to § 5 A 13 a may utilize such wells to meet this requirement.]

[~~18. A description of the facility's preventive maintenance procedures applicable to the oil storage and transfer system as well as the maximum pressure for each oil transfer system.~~ 19. The procedures to be followed, upon detection of a discharge of oil, for testing and inspection of all tanks, piping and all oil transfer associated equipment that could reasonably be expected to be a point source for the discharge. These procedures shall be conducted within the shortest feasible time and in accordance with recognized engineering practices.]

[~~19. A description of the security procedures used by facility personnel to avoid intentional or unintentional damage to the facility.~~ 20. The facility's preventive maintenance procedures applicable to the critical equipment of an oil storage and transfer system as well as the maximum pressure for each oil transfer system. The term "critical equipment" shall mean equipment that affects the safe operation of an oil storage and handling system.]

[~~20. A post discharge review procedure to assess the discharge response in its entirety.~~ 21. A description of the security procedures used by facility personnel to avoid intentional or unintentional damage to the

facility.

22. A post discharge review procedure to assess the discharge response in its entirety.]

B. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology [(economically feasible, proven effective and reliable and compatible with the safe operation of the vessel)] at the time the plan is submitted for approval, be written in English, and, [in order to be approvable, shall contain,] at a minimum, [contain] the following [information requirements] :

1. The vessel name, country of registry, identification number, date of build and [usual operating certificated] route of the vessel.

2. The name(s) of the vessel operator(s) including phone number.

3. If applicable, name of local agent, address and phone number.

4. [A copy of the material safety data sheet (MSDS) or its equivalent] for each oil [, or groups of oil with similar characteristics,] transported or transferred by the vessel [. To be equivalent, the submission must contain the following] :

a. Generic or chemical name of the oil;

b. Hazards involved in handling the oil; and

c. A list of fire fighting procedures and extinguishing agents effective with fires involving each oil [or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures] .

5. A complete listing, including 24 hour phone number, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the individual(s) responsible for making the required notifications and a copy of the notification check off list. This individual must be fluent in English.

7. The position title [, address and phone number] of the individual(s) authorized to act on behalf of the operator to implement containment and cleanup actions. This individual must be fluent in English [and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated] .

8. [A copy of the valid evidence of financial responsibility approved by the board pursuant to VR 680-14-08. The position title of the individual(s) designated by the operator to ensure compliance,

during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.]

9. [A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks. A copy of the valid evidence of financial responsibility approved by the board pursuant to VR 680-14-08.]

10. [A complete description of each oil transfer system on the vessel including: A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.]

[a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;

b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and

c. The maximum pressure for each oil transfer system.]

11. [A vessel drawing showing the location of fuel and other oils carried in bulk by the vessel. A complete description of each oil transfer system on the vessel including:

a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;

b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and

c. The maximum pressure for each oil transfer system.]

12. Identification and insurance by contract or other means acceptable to the board, of the availability of private personnel and equipment [designated within the area to provide assistance in event of a discharge which cannot be contained and cleaned up by vessel personnel necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge] . This contract or agreement shall ensure a certain response within the shortest feasible time. [The board will accept a letter of understanding between the operator and response contractor(s) which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the

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other information required by § 5 B 14 shall be included unless these capabilities are already on file with the board.]

13. [~~Inventory of containment equipment including specification of quantity, type, location, instructions for use, time limits for gaining access to the equipment, and identification of tank vessel personnel trained in its use. Assessment of the worst case discharge including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this regulation, the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.]~~

14. [~~If applicable, a copy of the Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP). Inventory of onboard containment equipment including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.]~~

15. [~~Assessment of the worst case discharge including measures to limit the outflow of oil, response strategy, operational plan and spill trajectories. For the purpose of this regulation, the worst case discharge is the complete release of all cargo in an environmentally sensitive area during adverse weather conditions. If applicable, a copy of the Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).]~~

16. [~~A description of the disposal procedures for both liquid and solid wastes generated during the response. These disposal procedures shall comply with applicable federal, state and local requirements. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.]~~

17. [~~A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.]~~

18. [~~A description of the vessel's cargo inventory control procedures. A post discharge review procedure to assess the discharge response in its entirety.]~~

[~~19. A post discharge review procedure to assess the discharge response in its entirety.]~~

C. All nonexempt facility and tank vessel operators shall

file with the board the appropriate application form found in Appendix I or Appendix II for approval of the contingency plan. This form shall be submitted with the required contingency plan and shall be completed insofar as it pertains to the facility or tank vessel. The operator must sign and date the certification statement on the application form. If the operator is a corporation, the form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form must be signed partner or the sole proprietor. All forms must be acknowledged before a Notary Public.

D. Contingency plans must be filed with and approved by the board. A signed original [~~and two copies~~] shall be submitted to the board at the address specified in subsection H of this section. [~~An approved copy~~ A copy of the original with the facility or tank vessel specific information and the approval letter] shall be retained on the facility or tank vessel and shall be readily available for inspection. [An operator of a tank vessel whose normal operating route does not include entry into state waters shall certify to the board, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the board, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge, or the substantial threat of a discharge. The operator shall submit a contingency plan to the board for approval in accordance with this regulation prior to next entry of the tank vessel into state waters.]

E. An operator of [~~a facility may submit a tank vessel contingency plan encompassing those tank barges which operate only within the waters contiguous to the facility. This zone of operation shall be provided on a chartlet submitted with the contingency plan. This contingency plan must identify the tank barges for which it is submitted and must certify that these barges will not be used to transport or transfer oil outside the approved zone. This plan shall be separate from the required facility contingency plan. multiple facilities may submit a single contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county or if one of the facilities are similar in design and operation. The plan shall contain site specific information as required by § 5 A for each facility. The site specific information shall be placed in appendices to the plan.]~~

F. An operator of [~~multiple facilities may submit a contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county in the Commonwealth. multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by § 5 B for each vessel. The vessel specific information shall be included in appendices to the plan. This plan~~

shall be separate from the required facility contingency plan.]

G. Oil discharge contingency plans shall be [~~updated periodically by the operator but in no event more frequently than once~~ reviewed, updated if necessary and resubmitted to the board for approval] every [~~36~~ 60] months unless significant changes occur [sooner] . [Operators must notify the board of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence.] For the purpose of this regulation, a significant change includes the following:

1. [A] change of operator of the facility or vessel unless notification to the board is made 90 days prior to the effective date of change;

2. [~~Change~~ A substantial increase] in the maximum storage or handling capacity of the facility or vessel;

3. [~~Change~~ A decrease] in the availability of private personnel or equipment [~~providing assistance in the event of a discharge that cannot be contained or cleaned up by facility or vessel personnel necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge~~] ; [~~or~~]

4. [A] change in type of product dealt in, stored, handled, transported or transferred in or by any facility or tank vessel covered by the plan [- for which a MSDS or its equivalent has not been submitted; or]

[5. The addition of a tank vessel to a single fleet contingency plan; provided, however, this requirement can be met by submittal of a new or amended appendix to the plan.]

H. [~~The operator shall immediately notify the board of any significant changes.~~] Updated plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan. All notifications of changes, submissions and updates of plans required by this regulation shall be directed to the Virginia State Water Control Board, Office of Spill Response and Remediation, P.O. Box 11143, Richmond, Va. 23230.

I. An oil discharge exercise may be required by the board to demonstrate the facility's or vessel's ability to implement the contingency plan. The board will consult with the operator of the vessel or facility prior to initiating an exercise. [Where appropriate, the board will ensure coordination with federal agencies prior to initiation of an exercise.]

J. The board may, after notice and opportunity for a conference pursuant to Virginia Code § 9-6.14:11, [deny or] modify its approval of an oil discharge contingency

plan if it determines that:

[1. The plan as submitted fails to provide sufficient information for the board to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;]

[~~1~~ 2.] A [significant] change has occurred in the operation of the facility or vessel covered by the plan;

[~~2~~ 3.] The facility's or vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

[~~3~~ 4.] There has been a significant change in the best available technology since the plan was approved.

K. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved;

3. A term or condition of approval has been violated; or

4. The facility or vessel is no longer in operation.

L. Upon review by the board, an oil spill contingency plan required by and approved under federal statute [or regulation] may be accepted, with or without modification, as meeting the requirements of this regulation.

§ 6. Administrative fees.

A. This section establishes application fees for approval of contingency plans.

B. An application for approval of an oil discharge contingency plan will be accepted only when the fees established by this section have been paid.

C. Fees shall be paid by check, draft or postal money order made payable to the Virginia State Water Control Board and must be in U.S. currency.

1. Application fees for approval of facility contingency plans are as follows:

a. For a facility with an aggregate above ground maximum storage or handling capacity between 25,000 gallons and 100,000 gallons of oil the fee is \$

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[~~1000~~ 718] ;

b. For a facility with an aggregate above ground maximum storage or handling capacity between 100,001 gallons to 1,000,000 gallons of oil the fee is \$ [~~3200~~ 2155] ; [~~and~~]

c. For a facility with an aggregate above ground storage or handling capacity greater than [or equal to] 1,000,001 gallons of oil the fee is \$ [~~5200~~ 3,353] [; and]

[d. For a pipeline, the fee shall be based on the average daily throughput of oil. Once that volume is determined, the application fee will be calculated as per § 6 C 1 a through c.]

2. Application fees for approval of tank vessel contingency plans are as follows:

a. For a tank vessel with a maximum storage, handling or transporting capacity between 15,000 gallons and 250,000 gallons of oil the fee is \$ [~~1000~~ 718] ;

b. For a tank vessel with a maximum storage, transporting capacity between 250,001 gallons and 1,000,000 gallons of oil the fee is \$ [~~3200~~ 2,155] ; and

c. For a tank vessel with a maximum storage, transporting capacity greater than [or equal to] 1,000,001 gallons of oil the fee is \$ [~~5200~~ 3,353] .

D. The fee for approval of contingency plans encompassing more than one tank [~~barge vessel~~] or facility, as authorized by §§ 5 E and 5 F of this regulation, shall be based on the aggregate capacity of the [~~barges vessels~~] or the facilities.

E. Application fees are refundable upon receipt of a written request no later than 30 days after submittal and prior to approval.

F. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicants future use under this section.

§ 7. Delegation of Authority.

The executive director, or his designee, may perform any act of the board under this regulation, except as limited by Virginia Code § 62.1-44.14.

APPENDIX I

APPLICATION FOR APPROVAL OF A FACILITY CONTINGENCY PLAN

State Water Control Board _____ State use only
P.O. Box 11143 _____ ID Number
Richmond, VA 23230 _____ Date Received

Please type or print in ink all items except signature in certification section. This form must be completed for each location containing aboveground oil storage tanks. If more than ten (10) tanks are owned at this location, photocopy applicable description sections and attach to this form.

Is this the first time the below listed operator is submitting an application? Yes No

If no what ID number was assigned to the first application?

Maximum oil storage or handling capacity _____ gls

No. of tanks at facility _____ No. of continuation sheets

Name and address of operator _____ Name and address of facility

Phone number of operator _____ Phone number of facility

Position title of person to make notification and initiate containment/cleanup

Certification

I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. (To be signed by the operator)

Name of operator _____ Signature _____ Date signed _____

1. When the operator is an individual acting in his own right:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

(Name)

Notary Public
My Commission Expires: _____

2. When the operator is an individual acting on behalf of a corporation:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

_____ who is _____
(Name) (Title)

of _____, a _____
(Name of Corporation) (State of Incorporation)

corporation, on behalf of the corporation.

Notary Public
My Commission Expires: _____

3. When the operator is an individual acting on behalf of a municipality, state, federal or other public agency:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

_____, on behalf of said _____
(Name and Title) (Municipality)

State, Federal or other agency)

Notary Public

My Commission Expires:

4. When the operator is an individual acting on behalf of a partnership:

State of

County/City of

The foregoing document was signed and acknowledged before

me this _____ day of _____, 199 , by _____

_____, a general partner on behalf of _____

(Name)

_____, a partnership.

(Name of Partnership)

Notary Public

My Commission Expires:

APPENDIX II

APPLICATION FOR APPROVAL OF A TANK VESSEL CONTINGENCY PLAN

State Water Control Board _____ State use only

P.O. Box 11143 _____ ID Number _____

Richmond, VA 23230 _____ Date Received _____

Please type or print in ink all items except signature in certification section. This form must be completed for each tank vessel transferring or transporting oil as cargo upon state waters. If the vessel has more than ten (10) tanks, photocopy applicable description sections and attach to this form.

Is this the first time the below listed operator is submitting an application? Yes No

If no what ID number was assigned to the first application? _____

Vessel name, flag, identification number and date of build. _____

Maximum oil storage or handling capacity _____ gls

No. of cargo tanks on the vessel.
No. of continuation sheets attached.

Name/address of operator Name/address of local agent

Phone number of operator Phone number of local agent

Position title of person to make notification and to
initiate containment/cleanup

Certification

I certify that I have personally examined and am familiar
with the information submitted in this and all attached
documents, and that based on my inquiry of these
individuals responsible for obtaining this information, I
believe that the submitted information is true, accurate,
and complete. (To be signed by the operator)

Name of operator Signature Date signed

1. When the operator is an individual acting in
his own right:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

(Name)

Notary Public
My Commission Expires:

2. When the operator is an individual acting on
behalf of a corporation:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

_____ who is _____
(Name) (Title)

of _____, a _____
(Name of Corporation) (State of Incorporation)

corporation, on behalf of the corporation.

Notary Public
My Commission Expires:

3. When the operator is an individual acting on behalf of a municipality, state, federal or other public agency:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

_____, on behalf of said _____
(Name and Title) (Municipality)

State, Federal or other agency)

Notary Public
My Commission Expires:

4. When the operator is an individual acting on behalf of a partnership:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me this _____ day of _____, 199 , by

_____, a general partner on behalf of _____
(Name)

_____, a partnership.

(Name of Partnership)

Notary Public
My Commission Expires:

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Title of Regulation: VR 680-14-08. Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval.

Statutory Authority: §§ 62.1-44.34:16 and 62.1-44.34:21 of the Code of Virginia.

Effective Date: January 29, 1992.

Summary:

In accordance with § 62.1-44.34:16 of the Code of Virginia, the State Water Control Board (board) has adopted regulations establishing requirements for financial responsibility on the part of operators of tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil.

The regulation provides acceptable means of demonstrating the required level of financial responsibility, therefore providing the Commonwealth with the necessary assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

In accordance with § 62.1-44.34:21 of the Code of Virginia the board is authorized to collect fees for approval of acceptance of evidence of financial responsibility. This regulation establishes a schedule of fees for this acceptance.

In consideration of all comments received during the comment period and at the public hearings, the regulations, were revised as follows:

A certificate of entry was added as acceptable proof of self-insurance under this section.

The board clarified that certain paragraphs would not apply to operators utilizing self-insurance as their means of demonstrating financial responsibility.

The fees for approval of evidence of financial responsibility were reduced.

VR 680-14-08. Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval.

§ 1. Definitions.

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

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement,

containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

["Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.]

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this regulation only, this definition does not include [nonpetroleum hydrocarbon-based] animal and vegetable oils [, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that act] .

"Operator" means any person who owns, operates, charters [by demise] , rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this regulation, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil. It does not include vessels carrying oil in drums, barrels, on deck portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 2. Applicability.

Evidence of financial responsibility requirements apply to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000

gallons of oil.

§ 3. Compliance dates.

This regulation shall be effective 30 days after publication in the Virginia Register. Cash or its equivalent shall be deposited with the board as required by Virginia Code § 62.1-44.34:16 and § 5 A of this regulation no later than 90 days after the effective date of this regulation. Operators seeking exemption from the cash deposit requirement shall submit their application and the evidence of financial responsibility no later than 60 days after the effective date of this regulation.

§ 4. Statement of purpose.

The purpose of this regulation is to establish requirements for financial responsibility on the part of operators of tank vessels transporting or transferring oil as cargo upon state waters. This regulation provides acceptable means of demonstrating the required level of financial responsibility, therefore providing the Commonwealth with the necessary assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

§ 5. Financial responsibility.

A. The operator of any tank vessel entering upon state waters shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in U.S. currency.

2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Federal government entities whose debts and liabilities are debts and liabilities of the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this regulation.

D. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash

deposit required for such tank vessel pursuant to Virginia Code § 62.1-44.34:16 and § 5 A of this regulation. The following means of providing such evidence, or any combination thereof, will be acceptable:

1. *Self-insurance.* Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board. An operator demonstrating self-insurance shall:

a. Maintain, in the United States, working capital and net worth each in the amount required by Virginia Code § 62.1-44.34:16 and § 5 A of these regulations. For the purpose of this regulation, "working capital" means the amount of current assets located in the United States, less all current liabilities; and "net worth" means the amount of all assets located in the United States, less all liabilities.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus, certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official), certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States and are acceptable for purposes of this regulation.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant, certifying to the amount by which the operator's assets, located in the United States and acceptable under this part, exceed total liabilities and that current assets, located in the United States and acceptable under this part, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have, during the first six months, fallen below the required amounts.

(4) Additional financial information shall be submitted upon request by the board, or

b. Provide evidence in the form of a marine

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insurance broker's certificate of insurance, [certificate of entry,] or other proof satisfactory to the board, that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs, or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of Virginia Code § 62.1-44.34:16 and § 5 A of these regulations.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by Virginia Code § 62.1-44.34:16 and § 5 A. The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the insurance form found in Appendix II. The insurer must also comply with all requirements in Appendix II.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form found in Appendix III. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by Virginia Code § 62.1-44.34:16 and § 5 A. The surety must also comply with all requirements in Appendix III.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form found in Appendix IV. The guarantor shall comply with all provisions of § 5 D 1 for self-insurance and also comply with all requirements in Appendix IV.

E. To obtain exemption from the cash deposit requirements:

[1. The operator shall appoint an agent for service of process in the Commonwealth;]

[~~1~~ 2.] The [operator and] insurer, guarantor, or surety shall appoint an agent for service of process in the Commonwealth;

[~~2~~ 3.] Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

[~~3~~ 4.] Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for

any violation by the operator of Article 11 of Chapter 3.1 (§ 62.1-44.34:14 et seq.) of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

[4. 5.] All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessel(s) in the amount required by § 62.1-44.34:16 and § 5 A of these regulations.

[6. Subdivisions E 2, E 3, and E 4 of this section do not apply to operators providing evidence of financial responsibility in accordance with § 5 D 1 of this regulation.]

F. Any operator whose financial responsibility is accepted under this regulation shall notify the board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

G. Acceptance of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

H. All nonexempt tank vessel operators shall file with the board the application form found in Appendix I for approval of the evidence of financial responsibility. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety) and shall be completed insofar as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. All forms must be acknowledged before a notary public. If the operator is a corporation, the form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form must be signed by a general partner or the sole proprietor.

I. Application for renewal of acceptance of proof of financial responsibility shall be filed with the board 30 days prior to the date of expiration.

J. All applications, notifications of changes, submissions and updates required by this regulation shall be directed

to the Virginia State Water Control Board, Office of Spill Response and Remediation, P.O. Box 11143, Richmond, Va. 23230.

K. The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

- 1. Acceptance has been procured by fraud or misrepresentation; or*
- 2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.*

L. If evidence of financial responsibility provided to the federal government or any other state meets the requirements of this regulation, the board may, upon review, accept it in full or partial satisfaction of the requirements of this regulation as appropriate. A certified copy of the document accepting the evidence of financial responsibility and a copy of the financial responsibility mechanism shall be provided to the board for approval.

§ 6. Administrative fees.

A. This section establishes application fees for acceptance of evidence of financial responsibility.

B. An application for approval of evidence of financial responsibility will be accepted only when the fees established by this section have been paid.

C. Fees shall be paid by check, draft or postal money order made payable to the Virginia State Water Control Board and must be in U.S. currency.

1. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

a. Applicants shall pay an application fee of \$ [~~200~~ 120] .

b. Applicants shall pay a fee of \$ [50 30] for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

D. Application fees are refundable upon receipt of a written request received by the board no later than 30 days after submittal and prior to approval.

E. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicants' future use under this section.

§ 7. Delegation of authority.

The executive director, or his designee, may perform any act of the board under this regulation, except as limited by Virginia Code § 62.1-44.14.

APPENDIX I

APPLICATION FOR APPROVAL OF EVIDENCE OF FINANCIAL
RESPONSIBILITY FOR A TANK VESSEL

State Water Control Board _____ State use only
P.O. Box 11143 _____ ID Number _____
Richmond, VA 23230 _____ Date Received _____

Please type or print in ink all items except signature in certification
section. Supporting documentation must be attached to this form and
must comply with the Tank Vessel Financial Responsibility Requirements
and Administrative Fees for Approval Regulation (VR 680-14-08).

Legal Name and address of operator

Name and address of Virginia agent for service of process

Phone number of operator _____ Phone number of agent _____

Is this the first time the above named operator is
submitting an application? Yes No

If no what ID number was assigned to the first application?

Operator's legal form of organization:
Individual Corporation Partnership
Association Joint stock company Business trust
Other (specify) _____

Evidence of financial responsibility is demonstrated by
(attach supporting documentation):

(Name)

Notary Public

My Commission Expires:

2. When the operator is an individual acting on behalf of a corporation:

State of _____

County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

who is _____
(Name) (Title)

of _____, a _____
(Name of Corporation) (State of Incorporation)

corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

3. When the operator is an individual acting on behalf of a municipality, state, federal or other public agency:

State of _____

County/City of _____

The foregoing document was signed and acknowledged before

me on this _____ day of _____, 199 , by

on behalf of said _____
(Name and Title) (Municipality

State, Federal or other agency)

Notary Public

My Commission Expires:

4. When the operator is an individual acting on behalf of a partnership:

State of _____
County/City of _____

The foregoing document was signed and acknowledged before

me this _____ day of _____, 199 , by _____

_____, a general partner on behalf of _____
(Name)

_____, a partnership.
(Name of Partnership)

Notary Public
My Commission Expires: _____

APPENDIX II

INSURANCE FORM FURNISHED AS EVIDENCE OF
FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR
DISCHARGE OF OIL UNDER VA. CODE § 62.1-44.34:16
AND SECTION 5.A OF VR 680-14-08.

(Name of Insurer)

(hereinafter "Insurer") hereby certifies that it is authorized to engage in the insurance business by the Commonwealth of Virginia and that for purposes of complying with the provisions of Va. Code § 62.1-44.34:16 and section 5.A. of the State Water Control Board's Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval Regulation (VR 680-14-08), each of the tank vessel operators specified in the schedules below is insured by it, in respect to each of the tank vessels respectively specified therein, against liability to the Commonwealth of Virginia to which such tank vessel operators could be subjected under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq). The amount of liability insured herein is:
1. In the case of a tank vessel, \$500.00 per gross ton of such tank vessel.
The foregoing amount of insurance coverage provided by

the Insurer on behalf of the Commonwealth of Virginia in respect to any tank vessel specified herein is not conditioned or dependent in any way upon any agreement or understanding between an assured operator and the Insurer that any such tank vessel will or will not carry oil, or will or will not operate in certain waters.

(Name of Agent)

with offices located at _____ is hereby designated as the Insurer's agent in the Commonwealth of Virginia for service of process for the purpose of Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq) and implementing rules in VR 680-14-08. If the designated agent cannot be served due to his/her death, disability, or unavailability, the Clerk of the State Corporation Commission becomes the agent for service of process.

The Insurer consents to be sued directly in respect of any claim against any of the operators arising under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq) and implementing rules in VR 680-14-08; provided, however, that in any such direct action its liability per tank vessel in any one incident shall not exceed \$500.00 per gross ton of such tank vessel. The Insurer shall be entitled to invoke only the rights and defenses permitted by Va. Code § 62.1-44.34:14 to the tank vessel operator.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the termination date of this undertaking, and shall be applicable only to incidents giving rise to claims under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq) in respect to any of the below listed tank vessels.

The effective date of this undertaking shall, for each tank vessel listed below, be the date the tank vessel is named in or added to the schedules below. For each tank vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the State Water Control Board that the Insurer has elected to terminate the insurance evidenced by this undertaking, and has so notified the operator.

However, for any tank vessel that is carrying oil in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not take effect (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the State Water Control Board of written notice that the Insurer has elected to terminate the insurance evidenced by this undertaking, whichever date is earlier.

Termination of this undertaking as to any tank vessel shall not affect the liability of the Insurer in connection with an incident occurring prior to the date such termination becomes effective.

If during the currency of this undertaking a below-named operator requests that an additional tank vessel be made subject to this undertaking and if the Insurer should accede to the request and should so notify the State Water Control Board, then the tank vessel shall be included in the schedules below.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The definitions in VR 680-14-08 shall apply to this undertaking.

I hereby certify that the wording of this instrument is identical to the wording in Appendix II of VR 680-14-08.

Effective date of coverage for tank vessels named on this undertaking:

day/month/year

(Name of Insurer)

(Mailing Address)

(Signature of Official Signing on Behalf of Insurer)

SCHEDULE OF TANK VESSELS AND ASSURED OPERATORS

Tank Vessel Gross Tons Assured Operator

SCHEDULE OF TANK VESSELS AND ASSURED OPERATORS

ADDED TO ABOVE SCHEDULE

Tank Vessel Gross Tons Assured Operator Date Added

APPENDIX III

SURETY BOND FORM FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL UNDER VA. CODE § 62.1-44.34:16 AND SECTION 5.A OF VR 680-14-08.

KNOW ALL PERSONS BY THESE PRESENTS, that We

(name of vessel operator)

of _____, as

(City) (State and Country)

Principal (hereinafter called Principal), and

_____ a company created and existing (Name of Surety)

under the laws of _____

(State and Country)

and authorized to do business in the Commonwealth of Virginia, as surety (hereinafter called Surety) are held and firmly bound unto the Commonwealth of Virginia for liability under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:16, 17 and 18), in the penal

sum of \$ _____

(\$500.00 per gross ton)

for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. The foregoing penal sum is not conditioned or dependent in any way upon any agreement or understanding between the Principal and Surety that any tank vessel(s) will or will not carry oil or will or will not operate in certain waters.

WHEREAS, the Principal intends to become or is a holder of an approval of evidence of financial responsibility under the provisions of Va. Code § 62.1-44.34:16 and section 5.A. of the State Water Control Board's Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval Regulation (VR 680-14-08), and has elected to file with the State Water Control Board such a bond as will insure financial responsibility to meet any liability to which such tank vessel operator could be subjected under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq), and

WHEREAS, this bond is written to ensure compliance by the Principal with the requirements of said Article 11 and section 5.A and shall insure to the benefit of claimants under § 62.1-44.34:13 of the State Water Control Law;

NOW, THEREFORE, the condition of this obligation is that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under said Article 11, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no event shall the Surety's obligation hereunder exceed the amount of the penalty, provided that the Surety furnishes written notice to the State Water Control Board forthwith of all suits filed, judgements rendered, and payments made by the Surety under this bond.

Any claim for which the Principal may be liable under said Article 11 may be brought directly against the Surety; provided, however, that in the event of a direct claim the Surety shall be entitled to invoke only the rights and defenses permitted by Va. Code § 62.1-44.34:19 to the Principal (tank vessel operator).

This bond is effective the _____ day of _____, 1991 a.m. Standard time at the address of the Surety

as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or Surety may at any time terminate this bond by written notice sent by certified mail to the other party with a copy (plainly indicating that the original was sent by certified mail) to the State Water Control Board, Office of Spill Response and Remediation, P.O. Box 11143, Richmond, Va. 23230. The termination becomes effective thirty(30) days after actual receipt by the State Water Control Board of written notice; provided, however, that with respect to any of the Principal's tank vessels carrying oil in bulk as cargo that has been loaded before the time of termination would otherwise have become effective, the termination shall not take effect (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the State Water Control Board of written notice of termination of the bond by the above named Principal or Surety under the conditions set forth above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but termination shall not affect the liability of the Surety in connection with an incident occurring before the date the termination becomes effective.

The Surety hereby waives notification of amendments to applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its obligation on

this bond.

The Surety designates _____
(Name of Agent)

with offices at _____
as the Insurer's agent in the Commonwealth of Virginia for
service of process for the purpose of Article 11 and VR
680-14-08. If the designated agent cannot be served due to
his/her death, disability, or unavailability, the Clerk of the
State Corporation Commission becomes the agent for service of
process.

If more than one surety company joins in execution of this
bond, that action constitutes joint and several liability on the
part of the sureties.

The definitions in VR 680-14-08 shall apply to this bond.

The persons whose signatures appear below hereby certify that
they are authorized to execute this surety bond on behalf of the
Principal and Surety, that this bond meets the requirements of
VR 680-14-08 and that the wording of this surety bond is
identical to the wording specified in Appendix III of VR
680-14-08.

In witness whereof, the above-named Principal and Surety have
executed this instrument on the _____ day of _____

19____.

(Please type name of signer under each signature. In the case
of partnership, each partner must sign.)

PRINCIPAL

Individual Principal or Partner Business Address

Individual Principal or Partner Business Address

Individual Principal or Partner Business Address

Corporate Principal

Business Address

(Affix Corporate Seal)

By _____

Title _____

SURETY

Corporate Surety

Business Address

By _____ (Affix Corporate Seal)

Title _____

Surety's Bond Number: _____

APPENDIX IV

GUARANTY FORM FURNISHED AS EVIDENCE OF
FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR
DISCHARGE OF OIL UNDER VA. CODE § 62.1-44.34:16
AND SECTION 5.A OF VR 680-14-08.

1. WHEREAS _____

 (Name of Vessel Operator)
 (hereinafter the "Operator") is the Operator of the tank vessel(s) specified in the annexed schedules (hereinafter "Tank Vessels"), and whereas the Operator desires to establish its financial responsibility in accordance with Va. Code § 62.1-44.34:16 and section 5.A. of the State Water Control Board's Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval Regulation (VR 680-14-08), the undersigned Guarantor hereby guarantees, subject to the provisions of clause 1-31 hereof, to discharge the Operator's legal liability to the Commonwealth of Virginia in respect to a claim under Article 11 of Chapter 3.1 of the Code of Virginia (Va. Code § 62.1-44.34:14 et seq). Upon payment of the agreed sum, the Operator is to be fully, irrevocably, and unconditionally discharged from all further liability to the claimant with respect to the claim. The Operator's legal liability under Article 11, which is covered by this

Guaranty, is:

a. In the case of a Tank Vessel, \$500.00 per gross ton of such Tank Vessel.

The foregoing amount of coverage provided by the Guarantor on behalf of the Commonwealth of Virginia in respect to any of the Tank Vessels is not conditioned or dependent in any way upon any agreement or understanding between the Operator and the Guarantor that any of the Tank Vessels will or will not carry oil, or will or will not operate in certain waters.

2. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise under Article 11 to causes of action against the Operator in respect of any of the Tank Vessels for discharge or threat of discharge of oil, occurring on or after the effective date of this Guaranty, which, as to each of the Tank Vessels, shall be the date the tank vessel is named in Schedule A or added to Schedule B below, and before the termination date of this Guaranty, which, as to each of the Tank Vessels, shall be the date 30 days after the date of receipt by the State Water Control Board, Office of Spill Response and Remediation, P.O. Box 11143, Richmond, Va. 23230 of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the Tank Vessels, and has so notified the Operator; provided, however, that with respect to any Tank Vessel carrying oil

in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the State Water Control Board of written notice of termination, whichever date is earlier. Termination of this Guaranty as to any of the Tank Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date of termination becomes effective.

3. Any claim against the Operator arising under Article 11 may be brought directly against the Guarantor; provided, however, that in the event of a direct claim the Guarantor shall be entitled to invoke only the rights and defenses permitted by Va Code § 62.1-44.24:18 to the tank vessel operator.

4. If, during the currency of this Guaranty, the Operator requests that a tank vessel operated by the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to the request and so notifies the State Water Control Board in writing, then the tank vessel becomes one of the Tank Vessels included in Schedule B and subject to this Guaranty.

8. The definitions in VR 680-14-08 shall apply to this Guaranty.

I herby certify that the wording of this Guaranty is identical to the wording specified in Appendix IV of VR 680-14-08.

EFFECTIVE DATE _____

(Month/Day/Year and Place of Execution)

(Type Name of Guarantor)

(Type Address of Guarantor)

By: _____

(Signature)

5. The Guarantor certifies that it meets or exceeds the financial test criteria for self insurance of section 5.D of VR 680-14-08, and agrees to comply with all the requirements for Guarantors as specified in VR 680-14.08. Guarantor agrees that if, at the end of any fiscal year before cancellation of this Guarantee, the Guarantor fails to meet the financial test criteria of section 5.D, Guarantor shall send within 30 days of such failure, by certified mail, notice to the operator. The Guarantee will terminate 30 days from the date of receipt of the notice by the operator, as evidenced by the return receipt.

6. The Guarantor hereby designates _____
(Name of Agent)

with offices at _____ as the Guarantor's agent in the Commonwealth of Virginia for service of process for the purpose of Article 11 and implementing rules in VR 680-14-08. If the designated agent cannot be served due to his/her death, disability, or unavailability, the Clerk of the State Corporation Commission becomes the agent for service of process.

7. If more than one guarantor joins in executing this Guaranty, that action constitutes joint and several liability on the part of the Guarantors.

Final Regulations

SCHEDULE A
TANK VESSELS INITIALLY LISTED

(Type Name and Title of Person Signing)

Tank Vessel _____ Gross Tons _____ Operator _____

SCHEDULE B

TANK VESSELS ADDED IN ACCORDANCE WITH CLAUSE (# 4)

Tank Vessel Gross Tons Operator Date Added

STATE CORPORATION COMMISSION

FINAL REGULATION

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 6, 1991

COMMONWEALTH OF VIRGINIA

At the relation of the

CASE NO. INS910261

Ex Parte: In the matter
of adopting Rules Establishing
Standards for Companies Deemed
to be in Hazardous Financial
Condition

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein September 3, 1991, the Commission ordered all interested parties to take notice that the Commission would enter an order subsequent to October 15, 1991, adopting a regulation proposed by the Bureau of Insurance entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" unless on or before October 15, 1991, any person objecting to the adoption of such regulation filed a request for a hearing, specifying in detail their objection to the adoption of the proposed regulation;

WHEREAS, as of the date of this order, no interested party has filed a request for a hearing before the Commission to object to the adoption of the proposed regulation; and

THE COMMISSION, having considered the record herein, the comments of interested parties and the recommendations of the Bureau of Insurance, is of the opinion that the regulation, as proposed, should be adopted;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" which is attached hereto and made a part hereof, should be, and it is hereby, ADOPTED to be effective January 15, 1992.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Roberta B. Meyer, Esquire, Counsel, American Council of Life Insurance, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 2004-2599; Joan M. Gardner, Esquire, Government Affairs Counsel, Blue Cross & Blue Shield of Virginia, P. O. Box 27401, Richmond, Virginia 23279; Alan J. Wood, President, Virginia Association of Health Maintenance Organizations, P. O. Box 31353, Richmond, Virginia 23294; and the Bureau of Insurance in care of Deputy Commissioner Alfred W. Gross, who shall forthwith give notice of the adoption of the regulation by mailing a copy of this order together with a copy of the regulation to all insurance companies,

health services plans and health maintenance organizations licensed in the Commonwealth of Virginia.

Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition (Insurance Regulation No. 42)

§ 1. Authority.

This regulation is issued pursuant to Virginia Code §§ 12.1-13, 38.2-223, 38.2-1038, 38.2-1316.2, 38.2-4811 and 38.2-5103, and the provisions of Chapter 15 (Rehabilitation and Liquidation) of Title 38.2 of the Code of Virginia.

§ 2. Purpose.

The purpose of this regulation is to set forth the standards which the Commission may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance.

This regulation shall not be interpreted to limit the powers granted the Commission by any laws or provisions of any law of this Commonwealth, nor shall this regulation be interpreted to supercede any laws or parts of laws of this Commonwealth.

§ 3. Applicability and scope.

This regulation shall apply to every entity that is licensed, approved, registered or accredited in Virginia under the provisions of Title 38.2 of the Code of Virginia, and also subject to solvency regulation in this Commonwealth pursuant to the provisions of Title 38.2 of the Code of Virginia. All such entities are hereinafter referred to as "insurer."

§ 4. Standards.

The following factors and standards, either singly or a combination of two or more, may be considered in determining whether an insurer's financial condition, method of operation, or manner of doing business in this Commonwealth might be deemed to be hazardous to policyholders, creditors, or the general public:

1. Adverse findings resulting from any financial condition or market conduct examination conducted pursuant to Article 4 of Chapter 13 of Title 38.2 of the Code of Virginia or any inspection authorized by the general provisions of § 38.2-200, including inspections of financial statements filed pursuant to Virginia Code §§ 38.2-1300, 38.2-1301, 38.2-1316.2, 38.2-1316.3, 38.2-4811 or 38.2-5103, or reported in any examination or other information submitted pursuant to Virginia Code § 38.2-5103;

2. The National Association of Insurance Commissioners' Insurance Regulatory Information System ("IRIS") and its related reports;

3. The ratios of commission expenses, general insurance expenses, policy benefits and reserve increases as to annual premium and net investment income;

4. The ratio of the annual premium volume to surplus or of liabilities to surplus in relation to loss experience and/or the kinds of risks insured;

5. Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operational leverage is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

6. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

7. Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50% in the preceding twelve month period or any shorter period of time;

8. Whether the insurer's current or projected net income is adequate to meet the insurer's present or projected obligations;

9. The age and collectibility of receivables;

10. Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

11. Contingent liabilities, pledges or guaranties which either individually or collectively may affect the solvency of the insurer;

12. Whether any affiliate of an insurer is delinquent in the transmitting to, or payment of, net premiums or other amounts due to such insurer;

13. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

14. Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

15. Whether the management of an insurer either has

filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

16. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

17. Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

§ 5. Commission's authority.

A. For purposes of making a determination of an insurer's financial condition, the Commission may:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

2. Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

B. For all entities subject to the provisions of Virginia Code § 38.2-1038, the Commission may issue an order regarding corrective action when it finds that (i) the insurer cannot, or there is a reasonable expectation that the insurer will not be able to, meet its obligations to all policyholders, or (ii) the insurer's continued operation in this Commonwealth is hazardous to policyholders, creditors and the public in this Commonwealth. Such an order may require the insurer, among other things, to undertake one or more of the following steps:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;

2. Reduce, suspend or limit the volume of business being accepted or renewed;

3. Reduce general insurance and commission expenses by specified methods;

State Corporation Commission

4. Increase the insurer's capital and surplus;
5. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
6. File reports in a form acceptable to the Commission concerning the market value of an insurer's assets;
7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commission deems necessary;
8. Document the adequacy of premium rates in relation to the risks insured;
9. File or cause to be filed, as evidence of the insurer's financial and business standing or solvency, one or more of the following reports:
 - a. Regular annual statements and interim financial reports,
 - b. Certified audited financial reports,
 - c. Actuarial opinions of reserves, including actuarial analyses of the reserves and the assets supporting such reserves, and
 - d. Any other analyses of the insurer's data necessary to secure complete information concerning the condition and affairs of the insurer.

§ 6. Severability.

If any provision in this regulation or the application thereof to any person or circumstance is held for any reason to be invalid, the remainder of the provisions in this regulation shall not be affected thereby.

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 27, 1991

COMMONWEALTH OF VIRGINIA

At the relation of the

CASE NO. INS910239

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
adopting Rules Governing Long-Term
Care Insurance

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein August 9, 1991, the Commission ordered that a hearing be held in the

Commission's Courtroom on October 17, 1991, for the purpose of considering the adoption of a regulation proposed by the Bureau of Insurance ("Bureau") entitled "Rules Governing Long-Term Care Insurance";

WHEREAS, the Commission conducted the aforesaid hearing where it received the comments of interested persons; and

THE COMMISSION, having considered the record herein, the comments of interested persons and the recommendations of the Bureau of Insurance, is of the opinion that the regulation should be adopted, with certain amendments;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing Long-Term Care Insurance" which is attached hereto and made a part hereof, should be, and it is hereby, ADOPTED to be effective January 1, 1992.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Joan M. Garder, Esquire, Blue Cross & Blue Shield of Virginia, P.O. Box 27401, Richmond, Virginia 23279; Mary Griffin, Esquire, Consumers Union, Suite 520, 2001 S. Street, N.W., Washington, D.C. 20009; Gary Cole, Counsel, Transport Life Insurance Company, 714 Main Street, Fort Worth, Texas 76102; Marian Dolliver-Altman, First Financial Services of Virginia, Suite 201, 1500 Forest Avenue, Richmond, Virginia 23229; and the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order together with a copy of the regulation to all insurers licensed to sell long-term care insurance in the Commonwealth of Virginia.

Rules Governing Long-Term Care Insurance.

Section 1. Authority.

This Regulation is issued pursuant to the authority vested in the Commission under §§ 38.2-223 and 38.2-5200 through 38.2-5208 of the Code of Virginia.

Section 2. Purpose.

This Regulation is designed to:

- (a) promote the public interest;
- (b) promote the availability of long-term care insurance coverage;
- (c) protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;
- (d) promote public understanding and comparison of long-term care insurance coverage; and

(e) promote flexibility and innovation in the development of long-term care insurance.

Section 3. Effective Date.

A. This Regulation shall be effective on January 1, 1992.

B. No new policy form shall be approved on or after January 1, 1992 unless it complies with this Regulation.

C. No policy form shall be delivered or issued for delivery in this Commonwealth on or after January 1, 1992 unless it complies with this Regulation.

Section 4. Applicability and Scope.

Except as otherwise specifically provided, this Regulation applies to all long-term care insurance policies delivered or issued for delivery in this Commonwealth, on or after the effective date hereof, by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers.

Section 5. Definitions.

For purposes of this Regulation:

A. "Applicant" means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

B. "Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

C. "Expected loss ratio" means the ratio of the present value of future premiums to the present value of future benefits over the entire period of the contract.

D. "Group long-term care insurance" means a long-term care insurance policy which complies with § 38.2-3523 of the Code of Virginia delivered or issued for delivery in this Commonwealth.

E. "Insurer" means any insurance company, health services plan, fraternal benefit society, health maintenance organization, cooperative non-profit life benefit company, or mutual assessment life, accident and sickness insurer.

F. "Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services,

provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance whether issued by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this Regulation. Health maintenance organizations, cooperative non-profit life benefit companies and mutual assessment life, accident and sickness insurers shall apply to the Commission for approval to provide long-term care insurance prior to issuing this type of coverage.

G. "Policy" means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer, fraternal benefit society, health services plan, health maintenance organization, cooperative non-profit life benefit company, or mutual assessment life, accident and sickness insurer.

Section 6. Policy Definitions.

No long-term care insurance policy delivered or issued for delivery in this Commonwealth shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

B. "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily

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living and respite care services.

C. "Medicaid" shall be defined as the program administered in accordance with Title 32.1 of the Code of Virginia.

D. "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

E. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

F. "Skilled nursing care", "intermediate care", "personal care", "home health care", and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

G. All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", "home for adults", and "home health care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 7. Policy Practices and Provisions.

A. Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 8 of this regulation.

(1) No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(2) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer

has no unilateral right to make any change in any provision of the insurance or in the premium rate.

B. Limitations and Exclusions. No policy may be delivered or issued for delivery in this Commonwealth as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(1) Preexisting conditions or diseases, subject to § 38.2-5204.B. of the Code of Virginia;

(2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, senile dementia, organic brain disorder or other similar diagnoses;

(3) Alcoholism and drug addiction;

(4) Illness, treatment or medical condition arising out of:

(a) war or act of war (whether declared or undeclared);

(b) participation in a felony, riot or insurrection;

(c) service in the armed forces or units auxiliary thereto;

(d) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(e) aviation (this exclusion applies only to non fare-paying passengers).

(5) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(6) This Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion.

(1) Group long-term care insurance issued in this Commonwealth on or after the effective date of this section shall provide covered individuals with a basis for continuation of coverage or a basis for conversion of coverage.

(2) For the purposes of this Regulation, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The substantial equivalency of benefits is subject to review by the Commission, and in doing so, the Commission shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provide system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this Regulation, "a basis for conversion of coverage" means a policy provision stating that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(4) For the purposes of this Regulation, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Commission to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the insurer, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. The determination of substantial equivalency is subject to review by the Commission.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than

thirty-one days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the initial group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) The terminating coverage is replaced, as to an individual insured, not later than thirty-one days after termination, by group coverage effective on the day following the termination of coverage:

(i) Providing benefits identical to or benefits substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this section. The determination of substantial equivalency is subject to review by the Commission.

(8) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

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(10) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this Regulation, a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

E. Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

Section 8. Required Disclosure Provisions.

A. Renewability. Individual long-term care insurance policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

C. Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations".

E. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in § 38.2-5205.A. shall set forth a description of such limitations or conditions, including any required number of days of confinement prior to receipt of benefits, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of Tax Consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

Section 9. Prohibition of Post-Claims Underwriting.

A. All applications and enrollment forms for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B. Requirements for applications or enrollment forms:

(1) If an application or enrollment form for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list each medication that has been prescribed.

(2) If the medications listed in such application or enrollment form were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition, even if such condition is not otherwise disclosed in the application or enrollment form.

C. Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application or enrollment form for a long-term care insurance policy or certificate:

Caution: If your answers on this application or enrollment form are incorrect or untrue, [company] has the right to deny benefits or rescind your [policy] [certificate].

The agent and the applicant must sign this section.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously, in bold face type, on the long-term care insurance policy or certificate at the time of delivery:

Caution: This policy may not apply when you have a claim! Please read] The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application [enrollment form]. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your [policy] [certificate]. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

(3) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

- (a) A report of a physical examination;
- (b) An assessment of functional capacity;
- (c) An attending physician's statement; or
- (d) Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the Commission in the format prescribed by the National Association of Insurance Commissioners.

Section 10. Minimum Standards for Home Health Care Benefits in Long-Term Care Insurance Policies.

A. A long-term care insurance policy or certificate may

not, if it provides benefits for home health care services, limit or exclude benefits:

- (1) By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided;
- (2) By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home or community setting before home health care services are covered;
- (3) By limiting eligible services to services provided by registered nurses or licensed practical nurses;
- (4) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;
- (5) By requiring that the insured/claimant have an acute condition before home health care services are covered; or
- (6) By limiting benefits to services provided by Medicare-certified agencies or providers.

B. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

Section 11. Requirement to Offer Inflation Protection.

A. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection offers the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

- (1) Increases benefit levels annually, in a manner so that the increases are compounded annually, at a rate not less than five percent (5%);
- (2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status; so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

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(3) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

B. Where the policy is issued to a group, the required offer in Subsection A above shall be made to each proposed certificateholder; except if the policy is issued to a continuing care retirement community the offering shall be made to the group policyholder.

C. The offer in Subsection A above shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

D. Insurers shall include the following information in or with the outline of coverage:

(1) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.

(2) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

Section 12. Requirements for Application Forms and Replacement Coverage.

A. Application or enrollment forms shall include the following questions designed to elicit information as to whether, as of the date of the application the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group the following questions may be modified only to the extent necessary to elicit information about accident and sickness or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

(1) Do you have another long-term care insurance policy or certificate in force (including a health services plan contract, or a health maintenance organization contract)?

(2) Did you have another long-term care insurance policy or certificate in force during the last twelve

(12) months?

(a) If so, with which company?

(b) If that policy lapsed, when did it lapse?

(3) Are you covered by Medicaid?

(4) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be phrased as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL

ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

.....
[INSURANCE COMPANY'S NAME AND ADDRESS]

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (Company Name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

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STATEMENT TO APPLICANT BY AGENT [OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage, I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention.

(1) [In the event that the replacing policy does not have exclusions or limitations for preexisting conditions this language may be deleted.] Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(3) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

.....
Signature of Agent or Other Representative

.....
(Typed name and Address of Agent)

The above "Notice to Applicant" was delivered to me on:

.....
(Date)
.....

(Applicant's Signature)

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be phrased as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

.....
Insurance Company's Name and Address

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (Company Name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(1) [In the event that the replacing policy does not have exclusions or limitations for preexisting conditions, this language may be deleted.] Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(3) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

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(4) (To be included only if the application is attached to the policy or certificate.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application or enrollment form attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application or enrollment form could cause an otherwise valid claim to be denied. Carefully check the application or enrollment form and write to (Company Name and Address) within thirty (30) days if any information is not correct or complete, or if any past medical history has been left out of the application or enrollment form.

(Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

F. An individual long-term care policy that replaces a previous long-term care policy must be at least substantially equivalent in benefits. The substantial equivalency of benefits is subject to review by the Commission. An insured may purchase and an insurer may issue an individual replacement policy that is less than substantially equivalent in benefits only under the following conditions:

(1) The insured provides to the insurer to which application for the replacement policy is made written acknowledgement and documentation satisfactory to the insurer that the insured has had a change in financial or personal circumstances sufficient to justify the replacement; and

(2) The insured signs a waiver form separate from, and in addition to the replacement notice by Section 12, Paragraphs C, and D. of this regulation. The waiver form shall be printed in boldface type of a size not less than 12 point, 1 point leaded; shall be executed at the time of application for the replacement policy; and shall be signed and dated both by the applicant and by the agent, if an agent is involved in the transaction. The waiver form shall state that the insured understands that the replacement policy applied for will provide benefits that are less than those provided by the policy being replaced; and

(3) One copy of the waiver form shall be retained by the applicant, and an additional copy signed by the applicant shall be submitted to the insurer, who shall retain such copy with the applicant's file, along with the acknowledgement and documentation required in

subsection (1) of this section. The insurer shall also retain copies of all such acknowledgements, documentation, and waivers in a separate file of long-term care policy replacements that may be examined and verified by the Commission or its authorized representatives.

Section 13. Reporting Requirements.

A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Each insurer shall report annually by June 30 the ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above.

C. Reported replacement and lapse rates do not alone constitute a violation of the insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

E. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

F. For purposes of this section, "policy" shall mean only long-term care insurance and "report" means on a statewide basis.

Section 14. Discretionary Powers of Commission.

The Commission may upon written request modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

A. The modification or suspension would be in the best interest of the insureds; and

B. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(1) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(2) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for

the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

(3) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Section 15. Reserve Standards.

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with § 38.2-3130 paragraph 7. Claim reserves must also be established in the case when such policy or rider is in claim status. Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- (1) Definition of insured events;
- (2) Covered long-term care facilities;
- (3) Existence of home convalescence care coverage;
- (4) Definition of facilities;
- (5) Existence or absence of barriers to eligibility;
- (6) Premium waiver provision;
- (7) Renewability;
- (8) Ability to raise premiums;
- (9) Marketing method;
- (10) Underwriting procedures;
- (11) Claims adjustment procedures;
- (12) Waiting period;
- (13) Maximum benefit;

- (14) Availability of eligible facilities;
- (15) Margins in claim costs;
- (16) Optional nature of benefit;
- (17) Delay in eligibility for benefit;
- (18) Inflation protection provisions; and
- (19) Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

B. When long-term care benefits are provided other than as in Subsection A above, reserves shall be determined in accordance with § 38.2-3130 paragraph 7.

Section 16. Loss Ratio.

Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- A. Statistical credibility of incurred claims experience and earned premiums;
- B. The period for which rates are computed to provide coverage;
- C. Experienced and projected trends;
- D. Concentration of experience within early policy duration;
- E. Expected claim fluctuation;
- F. Experience refunds, adjustments or dividends;
- G. Renewability features;
- H. All appropriate expense factors;
- I. Interest;
- J. Experimental nature of the coverage;
- K. Policy reserves;
- L. Mix of business by risk classification; and
- M. Product features such as long elimination periods, high deductibles and high maximum limits.

Demonstrations of loss ratios shall be made in

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compliance with Regulation No. 22 Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms.

Section 17. Filing Requirements for Advertising.

A. Every insurer providing long-term care insurance or benefits in this Commonwealth shall provide a copy of any long-term care insurance advertisement intended for use in this Commonwealth whether through written, radio or television medium to the Commission for review or approval by the Commission to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.

B. The Commission may exempt from these requirements any advertising form or material when in the Commission's opinion, this requirement may not be reasonably applied.

Section 18. Standards for Marketing.

A. Every insurer, marketing long-term care insurance coverage in this Commonwealth directly or through its agents, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate.
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) Display prominently by type, stamp or other appropriate means on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.
- (5) Every insurer, marketing long-term care insurance shall establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in Chapter 5 of Title 38.2 (§ 38.2-500 et seq.) the following acts and practices are prohibited:

- (1) Twisting. Making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit,

surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High Pressure Tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold Lead Advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section 19. Appropriateness of Recommended Purchase.

In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

Section 20. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.

If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 21. Standard Format Outline of Coverage.

This section of the regulation implements, interprets and makes specific, the provisions of § 38.2-5207 in prescribing a standard format and the content of an outline of coverage.

A. The outline of coverage shall be a free-standing document, in at least ten-point type.

B. The outline of coverage shall contain no material of an advertising nature.

C. Text which is capitalized or underscored in the standard format for outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.

D. The text and sequence of text of the standard format for outline of coverage is mandatory, unless otherwise specifically indicated.

E. Format for outline of coverage:

[COMPANY NAME]

[ADDRESS - CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied.] If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return - "free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government, or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities/provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) Exclusions/exceptions;

(e) Limitations.]

State Corporation Commission

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.] THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

[(a) Describe the policy renewability provisions; (b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy; (c) Describe waiver of premium provisions or state that there are no such provisions; (d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured. In the event that the policy does not cover such preexisting conditions, that information should be included here also.]

11. PREMIUM.

[(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

[(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

Section 22. Severability.

If any provision of this Regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of this Regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

STATE CORPORATION COMMISSION

Bureau of Financial Institutions

Title of Regulation: Administrative Ruling 0210. Loans Secured by Real Estate.

Statutory Authority: § 6.1-63 of the Code of Virginia.

1. General Statement.

The need for, or usefulness of, an appraisal of real estate which is to be conveyed as security for a loan is, in the first place, dictated by practical considerations - not by law. Therefore, the responsibility for determining when an appraisal is called for in connection with a loan rests in the sound discretion of bank management. Prudent lending practice may call for an appraisal of real estate security regardless of any legal requirements.

2. Amount of Loan Requiring Appraisal.

When a bank makes a loan secured by real estate within the meaning of Virginia Code §§ 6.1-63 and 6.1-65 (hereinafter referred to as a "real estate loan") the bank is required by law to have a written appraisal, if the amount of the loan is greater than an amount to be established by the Commissioner of Financial Institutions as provided in Subsection D of § 6.1-63. Home improvement loans (as defined in § 6.1-66), even though secured by a real estate lien, may not be considered real estate loans, if they meet several criteria, one of which is that the amount of the loan not exceed an amount similarly established.*

Therefore, pursuant to a provision of Subsection D of Virginia Code § 6.1-63, having considered the appraisal requirements imposed on state banks under applicable federal regulations, the Commissioner hereby establishes these real estate loan amounts:

\$100,000 - Real estate loans of this amount and more are required to be supported by an appraisal. (§ 6.1-63)

\$100,000 - Home improvement loans below this amount may not be "real estate loans," if certain conditions are met. (§ 6.1-66)

3. Date of Appraisal.

While the law sets no requirement for the date of an appraisal in relation to the date of making the loan, it is reasonable to expect that an appraisal be current and that it support the value upon which the loan relies. Therefore, while no arbitrary time limit is set, it is required that an appraisal in support of a real estate loan be made within a reasonable time prior to the date of the loan, and that the appraisal be related specifically to the loan rather than to another transaction.

4. Interests Excluded from the Term "Real Estate."

For purposes of the requirement of an appraisal in connection with real estate loans, the Bureau will not construe the term "real estate" as including mineral rights, timber rights, or growing crops.

5. Appraisal According to Standards for Insurers or Guarantors.

Virginia law requires only that real estate appraisals be in writing and that they be done by experienced persons competent to appraise real estate in the place where it is located. In an approach which differs from that taken by recent federal law and regulation in this area, state law has not undertaken to prescribe a standard or to establish an approved class of appraisers. Therefore it appears there will be no conflict between state law and this ruling, on the one hand, and the appraisal standards of various insuring or guaranteeing agencies.

Issued by the Commissioner of Financial Institutions December 4, 1991. This ruling replaced BFI AR 0210 dated July 17, 1979 and BFI AR 0210.1 dated June 4, 1991.

.....
*Virginia Code § 6.1-63 itself, and §§ 6.1-64, 6.1-65, and 6.1-66 set forth a series of exceptions to the general legal requirement of appraisals in support of real estate loans.
.....

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER THIRTY-TWO (91)

"WILD CARD"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Wild Card" promotional game and drawing rules for the kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, December 19, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until December 31, 1991, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: December 3, 1991

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0076. Pertaining to the Setting of Crab Pots.

Statutory Authority: §§ 28.1-25 and 28.1-173.1:1 of the Code of Virginia.

Effective Dates: November 27, 1991, to December 7, 1991.

Preamble:

This emergency regulation extends the crab pot season from December 15, 1991, through December 26, 1991.

VR 450-01-0076. Pertaining to the Setting of Crab Pots.

§ 1. Authority, effective date, termination date.

A. This emergency regulation is promulgated pursuant to the authority contained in Sections 28.1-25 and 28.1-173.1:1 of the Code of Virginia.

B. The effective date of this regulation is November 27, 1991.

C. This regulation shall terminate on December 27, 1991.

§ 2. Purpose.

The purpose of this regulation is to change the time period during which it shall be unlawful to knowingly place a crab pot in the tidal tributaries of the Commonwealth.

§ 3. Crab pot season.

It shall be unlawful to knowingly place, set or leave any crab pot in any of the tidal tributaries of the Commonwealth between December 27, 1991, and January 31, 1992, both dates inclusive.

§ 4. Penalty.

As set forth in Section 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of the Regulation shall be guilty of a Class I misdemeanor.

/s/ William A. Pruitt
Commissioner
Date: November 26, 1991

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF GENERAL SERVICES

Title of Regulation: VR 330-02-05. Requirements for Approval to Perform Prenatal Serological Tests for Syphilis.

Governor's Comment:

I concur with the concept of this proposal. My final approval will be contingent upon the agency's consideration of the Department of Planning and Budget's suggestions and a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 7, 1991

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.

Governor's Comment:

Promulgation of these guidelines would ensure opportunities for public participation in formulating and adopting regulations and minimum standards promulgated by the Department of Motor Vehicles.

/s/ Lawrence Douglas Wilder
Governor
Date: December 10, 1991

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-16-02. Roanoke River Basin Water Quality Management Plan.

Governor's Comment:

These regulations are intended to delete references that will be outdated when amendments to the water quality management plan and the wastewater management plan for the upper Roanoke River subarea become effective. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: December 5, 1991

* * * * *

Title of Regulation: VR 680-16-02:1. Upper Roanoke River

Subarea Water Quality Management Plan.

Governor's Comment:

These regulations are intended to update the existing water quality management plan and the wastewater management plan for the upper Roanoke River subarea. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: December 7, 1991

The Legislative RECORD

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THIS ISSUE . . .

1 *Virginia Coal and Energy Commission*

4 *HJR 451: Blue Ridge Economic Development Commission*

7 *HJR 334: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels*

8 *HJR 456: Commission on Local Government Structures and Relationships*

Virginia Coal and Energy Commission

November 25, 1991, Richmond

During its November meeting, the Coal and Energy Commission was briefed on Governor Wilder's energy conservation plan and was updated on a study of the feasibility of wheeling power from nonutility electric power plants in Southwest Virginia.

Virginia Energy Plan

The Wilder administration recently announced a three-year plan to enhance energy efficiency and conservation. Its initial focus is on attaining these objectives in state agency operations. The plan anticipates that agencies

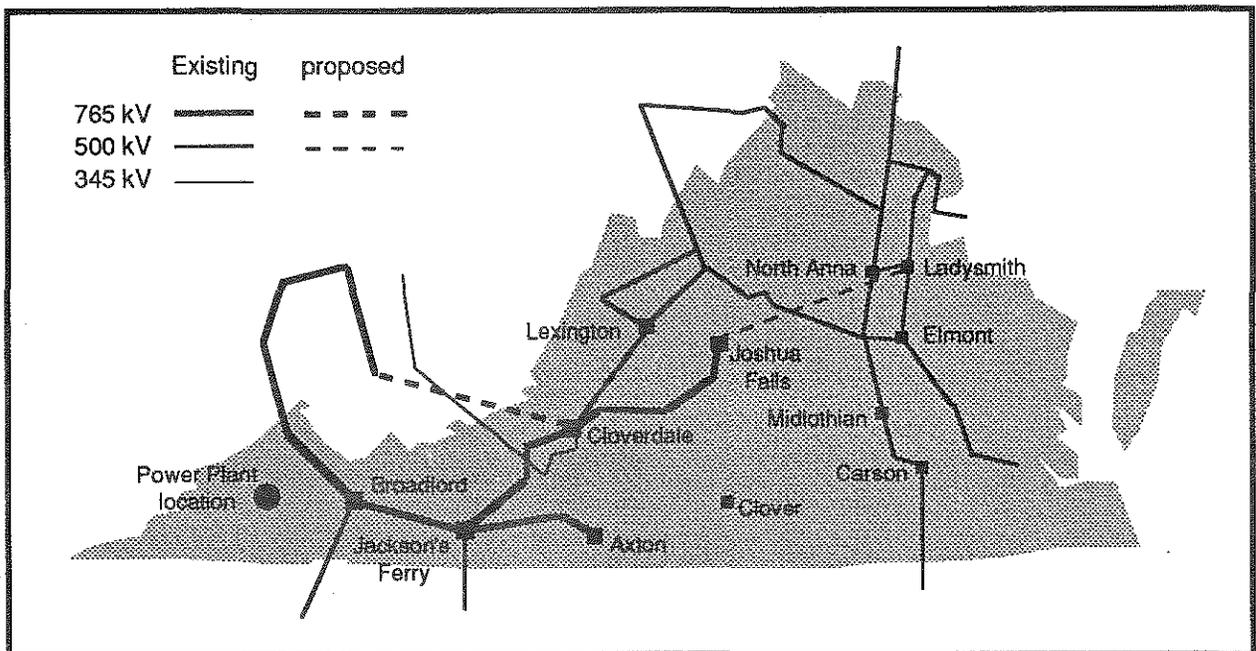


Figure 1. Appalachian Power and Virginia Power transmission lines. Source: VCCER.

will take the experience gained and assist their clients, when practicable, to improve energy efficiency and conservation. Kathy J. Reynolds, director for administration of the Department of Mines, Minerals and Energy (DMME), summarized the administration's plan. She emphasized the efficiency and conservation thrust of the plan — it does not deal with energy policy vis-a-vis extraction of energy resources. Instead the plan envisions the state's "leading by example" to conserve finite resources and achieve economic savings in the process.

Ms. Reynolds pointed out that preliminary steps include appointment of energy managers at all state agencies and development of energy-savings plans at each agency. These plans may include efforts to reduce electrical consumption at state buildings and facilities — a major goal — by replacing inefficient fixtures and taking other steps to reduce overall electrical load. Energy audits of state buildings and facilities, a significant part of the plan, will be conducted by the Department of General Services' Energy Team. Additionally, some agencies may seek to reduce fuel consumption and pollution by encouraging their employees to join daily car pools.

A 1991 DMME Division of Energy publication, *Virginia Energy Patterns and Trends*, reports that Virginia's per-capita energy consumption increased from well below the national average in the late 1970s to just slightly below that average by 1990. Increased energy consumption in this period correlates to Virginia's economic growth during the 1980s — particularly in Northern Virginia. Not surprisingly, the report also found that transportation accounted for the largest portion of end-use energy consumption — 43% in 1990.

The Governor's plan calls for reduced energy consumption in the transportation operations of all agencies. For example, one strategy requires agencies to (i) reduce discretionary trips, (ii) choose meeting locations that ensure maximum fuel conservation, and (iii) use public transportation. The state will also examine the use of alternate fuels in meeting its transportation needs. The Department of Transportation is slated to convert 50 vehicles in the state's fleet to compressed natural gas. State agencies will also expand their use of the telecommunications system to decentralize

work and reduce the need for travel to offices, meetings, and conferences.

The plan has several additional objectives: energy-production efficiency, energy awareness, energy management planning, and the use of alternative fuels, renewables, and alternative energy sources. In the plan's first year (July 1991 through June 1992), energy efficiency in state and local government operations is the primary objective; in the second year, energy efficiency in state agency programs; and in the third, public outreach for business, industry, and consumers.

Commission members focused on the plan's energy-production efficiency objective. One member noted that Longwood College has converted some of its heating plants to wood-chip-burning facilities. However, some noted, current petroleum prices tend to make such conversions economically unattractive, since heating oil is presently quite affordable. Other members noted that increasing consumption of Virginia's low-sulphur coal should figure more prominently in a plan calling for pollution reduction as part of its overall goal. Furthermore, they said, agencies should coordinate their efforts while pursuing this plan to ensure that their plans mesh with this commission's goals.

Wheeling Power

William F. Stephens, director of the State Corporation Commission's Division of Energy Regulation, summarized an SCC interim report required by HJR 441 and released in September. HJR 441 was adopted by the 1991 General Assembly and required the SCC to "study what steps could be implemented in the near future to enable 100 megawatts (MW) or more of power, prior to 1998, to be wheeled from electric power plants built in Southwest Virginia." The SCC issued an initial interim report on this topic on June 1, 1991.

Mr. Stephens noted that facility improvements made or planned will improve west-to-east transfer capability on the regional transmission system. This added capability should enable the system to accommodate the transfer of up to 250 MW of additional power from Appalachian Power (Apco) to Virginia Power's (VP) service area. He cautioned that this capability may be short-lived, because native load growth and possible delays in completing facility enhancements could result in the incremental consumption of the existing west-to-east transfer capabilities. Moreover, construction of one or more major transmission lines may be necessary to further accommodate significant west-to-east power transfer greater than 250 MW in any event.

The Virginia Center for Coal and Energy Research (VCCER) has been analyzing the feasibility of constructing a new west-to-east transmission line as part of the HJR 441 study. The VCCER's associate director, Carl Zipper, appeared before the commission to discuss a report it recently completed on the issue.

The VCCER has played a pivotal role in this study, because an earlier study it conducted concluded significant economic benefits would result from construction of new electric power generation facilities in the Virginia coalfields using locally mined coal. The same report identified the largest barrier to constructing these new, nonutility facilities: access to power transmission lines to facilitate power transfers from Southwest Virginia (SWVa) to the VP service area.

Point of Terminus	Voltage (kV)	Capitol Cost (million \$)	Power Input (MW)	Cost at Interest Rate		
				10%	13%	16%
				(\$/kwhr)		
SW Va - Eastern Va	500	202	500	.0074	.0091	.0109
			870 ¹	.0043	.0053	.0063
SW Va - Clover	345	127	500 ¹	.0048	.0059	.0070
SW Va - Lexington	345	117	500 ¹	.0044	.0054	.0064
Lexington - Ladysmith	500	103	500	.0038	.0047	.0056
SW Va - Cloverdale	345	85	500	.0032	.0039	.0047
			610 ¹	.0026	.0032	.0038
SW Va - J. Ferry	500	66	500	.0024	.0029	.0035
	345	65	500	.0024	.0029	.0035
SW Va - Broadford	345	37	500	.0013	.0016	.0020
Broadford - J. Ferry	500	54	500	.0019	.0024	.0029
	345	71	500	.0026	.0031	.0038

1. Approximate maximum power transfer capability. SW Va. - Jackson's Ferry and Broadford - Jackson's Ferry 500-kV transfer capabilities exceed 1000 MW.

Table 1. Estimated costs for single-circuit electric power transmission lines of various configurations.
Source: VCCER.

The VCCER concludes that access for all practical purposes means interconnection with the Apco/VP grid. In that vein, a number of options have been considered and are illustrated in Figure 1 (front page):

■ Connecting a SWVa generating facility to the Apco 765 kilovolt (kV) system with a direct access line to Jackson Ferry and construction of a 500 kV line from Axton to Clover, thereby creating a direct connection to the eastern Virginia 500 kV network once additional transmission linking Clover to that network is complete.

■ Construction of a new line from SWVa to Cloverdale. From Cloverdale, power transfer to eastern Virginia would be accomplished via a line from Joshua Falls to Ladysmith — a line that VP may complete, contingent upon Apco's construction of a line from Wyoming to Cloverdale.

The VCCER views the second option as a considerably more direct route to the eastern Virginia power system. VP and Apco have apparently expressed some guarded optimism about the technical feasibility of this option; any endorsement of the plan would await the outcome of flow modeling studies.

Line construction costs were also examined as part of the VCCER study. Table 1 summarizes cost projections for various transmission line configurations. Mr. Zipper said that the costs include construction expenses, right-of-way acquisition, local property taxes, and a 10% contingency. These components conform to construction guidelines developed by the Federal Energy Commission. He added that the 500 kV line from SWVa to eastern Virginia was the only feasible scenario at this time.



The Honorable A. Victor Thomas, *Chairman*

Legislative Services contact: Arlen K. Bolstad

HJR 451: Blue Ridge Economic Development Commission

October 29, 1991, Roanoke

Marketing the Commonwealth

The keynote speaker for the October meeting of the Blue Ridge Economic Development Commission was the Honorable Lawrence H. Framme III, Secretary of Economic Development, who reminded the commission that there is no "quick fix" for the long-term economic future of Virginia or the Blue Ridge region. Virginia needs a long-term, sustained effort to help it out of its current situation. Solid economic progress requires up-front investment, continuing and long-term investment and commitment, and even pain at times.

The Blue Ridge region has continued to take this approach. For example, in industrial development, the region has effected industrial recruitment by investing money up front, without immediate return. Now, that investment is helping to sustain the region in a very difficult time of economic downturn, and the Blue Ridge region has not been affected as severely as other regions of the Commonwealth.

At the state level, through a series of administrations, economic development efforts have focused on the need for long-term investments in the areas of industrial recruitment, trade, and tourism.

Industrial Recruitment

Virginia maintains an active sales force, which calls on domestic and international businesses on a daily basis. The list of business prospects is developed first by responding to specific inquiries; second by responding to electronic or printed media marketing efforts; and third by making "cold calls," where the marketing representative just takes a chance.

When those calls are made, Virginia is presented as a whole, with no particular region initially targeted. The representative then seeks to establish the criteria the business needs for its expansion. The Department of Economic Development then attempts to match the particular areas of the state to the criteria. When the

business already has a location preference, the department still suggests alternate choices.

Once the business has narrowed its choice to a few specific localities, the department places the business in contact with the appropriate local economic development agencies, of which there are at least four in the Blue Ridge region. At that point, the sales burden shifts to the locality to marshal its assets and sell itself to the business.

Tourism Marketing

Tourism is more of a direct consumer marketing effort. The thrust behind the state's overall tourism marketing effort is to market Virginia as a whole. Most tourism marketing is done through the advertising budget of the Division of Tourism, which exceeds \$6 million.

The division maintains a series of electronic and print media that are used for a particular theme for a certain time period. Advertising used by the division has two major purposes:

- to generate a thematic feeling, or sense, about Virginia and
- to prompt people to call the toll-free 800 telephone number contained in the advertisements, so the division can send them the Virginia Tourism Guide.

The advertising is not intended to match an individual tourist with a particular attraction or region. However, statistics show and the division realizes that certain tourists from particular parts of the country tend to travel to certain attractions and areas in the Commonwealth. These statistics are used when deciding in what markets to advertise the different regions of the state.

Virginia averages a high return rate: of those individuals who call and request information, a high percentage will actually travel to the Commonwealth.

Industrial tourism marketing includes marketing efforts geared towards group tours, hotels, motels, and travel package providers. This marketing involves sales calls from marketing representatives to the various groups and associations.

The Blue Ridge region is featured, not by name, but by its mountains and open air, in 50% of the state's media advertisements.

Currently, changes are being made in the media advertisements. Three new advertisements have been prepared, characterized by a more emotional appeal, featuring real Virginians going about their everyday lives. One is based on the water, another on a fiddler and the people of Galax, and a third on a group of singers. These ads do not attempt to market a particular attraction but do provide more marketing opportunities for western Virginia.

Trade Marketing

A two-week trade mission to the far east was recently completed. Also, the merger of the Department of World Trade into the Department of Economic Development has allowed the Commonwealth to increase its international marketing efforts. For the first time, Virginia has a full-time trade promotion expert overseas, who has been cross-trained to handle trade promotion as well as industrial recruitment.

The department's trade group is also working closely with the Virginia Port Authority to promote the use of Virginia's ports.

Environmental Permitting

Bernard Caton, deputy secretary of Natural Resources, addressed the commission regarding the state's environmental permitting process, which is currently being reviewed and improved by the Secretary of Natural Resources. He noted that economic vitality and environmental quality require that permits be issued and issued on a timely basis.

Most of the state's environmental regulatory programs are developed around very specific and complex federal pollution laws. Since state laws must be compatible with the federal regulations and laws, the state regulatory agencies themselves are often frustrated with the process.

For the past year, the Secretary of Natural Resources has been reviewing the permitting process and identifying positive steps that can be taken to improve the process, while maintaining the quality of the permits. The regulatory agencies have been instructed to formulate ways to simplify and streamline their permitting processes. Also, a consultant has been hired, with federal funds, to evaluate the permitting processes of the regulatory agencies with a goal of speeding up the process. SB 590, passed during the 1991 Session, has prompted the creation of the Inter-Agency Permit Assistance Group. The group's purpose is to assist businesses in obtaining the necessary environmental permits.

The state has also sponsored a group of seminars throughout the Commonwealth concerning the permitting process. All four of the environmental permitting agencies attended each seminar to discuss why permits are needed and what steps are necessary to obtain a permit.

A General Guide for Environmental Regulation in Virginia has been published by the Commonwealth to assist potential licensees. The *Virginia Environmental Permits Directory* is currently being written with detailed descriptions of each permit, the applicable fees, and any appeals processes available to the potential licensee.

State Parks

Dennis Baker, acting director of the Division of State Parks, addressed the commission concerning state parks in the Blue Ridge region. Parks should be viewed as partners in economic development and remain open in the fall and winter, the prime tourist season for the Blue Ridge Mountains. Parks need funding so they can provide much needed economic growth for the surrounding localities. Funds will be required to winterize the facilities and pay the park personnel for the fall and winter months, so the parks can realize their full potential.

November 26, 1991, Lexington

At its final meeting of the year, the commission developed and adopted a number of recommendations for submission to the Governor and the 1992 Session of the General Assembly. The members also agreed to request a continuance of the commission for an additional year to further explore specific strategies to improve and enhance the economic development of the Blue Ridge region and to request the addition of one planning district commission director to the commission's current membership.

Workforce Education and Training

Senator Daniel W. Bird, Jr., presented recommendations addressing initiatives to enhance the education and training of the workforce. The commission adopted the recommendations, which include the creation of a Blue Ridge Education and Training Council to upgrade the basic educational levels of adults in the region to create a more active and attractive workforce; reinstatement of the enrollment loss funding mechanism to assist school systems in those localities that are experiencing a loss in general population; the establishment of a comprehensive regional technical training plan for the Blue Ridge region; and the development of start-up funds to enhance school-business partnership programs.

Promoting Tourism

Recommendations promoting tourism and marketing local attractions in the region were presented by Senator J. Granger Macfarlane. The commission adopted all of the task force's recommendations, which included the provision of funds for a state matching-grant program for cooperative and regional tourism development and advertising; the creation of a fund to provide low-interest, deferred-payment loans to small businesses that provide tourism-related services; and provision of funds to hire a full-time experienced tourism marketing director for the Blue Ridge region. The commission also agreed to recommend that the General Assembly empower the Center for Hospitality Research and Service at Virginia

Tech to conduct a study of the Virginia welcome centers and that the newly created Virginia Tourism Accreditation Program be evaluated, prior to implementation, to ensure that it is not detrimental to smaller localities and small business located therein. Lastly, the commission agreed to recommend that state parks be used as vehicles for economic development, and that Douthat State Park be open and staffed during the fall season. This pilot project could be analyzed for potential expansion to other state parks.

Partnerships

Donald P. Lacy presented a recommendation addressing partnerships between state and local governments, educational institutions, and the private sector. The commission accepted the recommendation establishing a Blue Ridge Region Electronic Research and Development Support Network to link businesses, industries, educational institutions, and local governments to exchange information and to use the research and human resource capabilities of educational institutions in support of the research and development needs of businesses, industries, and local governments.

Marketing Strategies

Marketing strategies to promote business and industry were presented to the commission by Charles Saul. The commission approved all of the recommendations, which included the creation of a Blue Ridge Economic Development Advisory Council; the development of an export program for the region by this newly formed council; the establishment of a "closing fund" to be used at the discretion of the Governor to attract businesses to the area; and funding for a matching-grant program to advertise tangible assets of the Blue Ridge region.

Expansion and Diversification of Existing Industry

Senator Frank W. Nolen presented a number of recommendations, all of which were adopted by the commission. They include imposing deadlines for agency review of environmental permit applications; prohibiting the environmental regulatory boards from promulgating regulations more stringent than applicable federal requirements; creation of a Blue Ridge Economic Development Revolving Fund for the expansion, diversification, or modernization of existing industry within the region; and establishing the Commonwealth Rail Transportation Fund. Recommendations were also accepted requesting the Secretary of Natural Resources to review the current status of, and the need for improvement in, environmental improvement projects; memorializing Congress to release to Virginia those federal trust funds intended for improvement of Virginia's transportation infrastructure; requesting the College of Agriculture and Life Sciences at Virginia Tech to expand its research initiatives to identify innovative applications of forestry, agricultural, and biotechnological resources endemic to the Blue Ridge Region; requesting the continuance of funding for Virginia Tech's Virginia Cooperative Extension; and requesting the Virginia Department of Transportation to take prompt action on the construction and improvement of the Route 29 corridor and feeder roads in the area, such as Routes 220, 501, 60, and 460.

Regional Data Collection

A recommendation concerning regional data collection and analysis, information services, and communication needs was presented to the commission by Donald P. Lacy. The recommendation, which calls for the development of a Blue Ridge Region Electronic Communication and Information Network to facilitate the transfer of information between development agencies that is necessary to promote and support development of the region, was unanimously accepted by the commission.

After adopting its recommendations, the full commission agreed to defer to the legislative members all recommendations requiring state funding. The legislative members plan to meet in the near future to review these recommendations.



The Honorable Joan H. Munford, *Chairman*
Legislative Services contact: Edie T. Conley

HJR 334: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

November 19, 1991, Richmond

Clean Air Amendments

The joint subcommittee was briefed by Beth Major of the Virginia Department of Air Pollution Control on the requirements of the federal Clean Air Amendments of 1990 (particularly as they relate to motor vehicles and motor vehicle emissions) and Virginia's plans to implement these requirements. Ms. Major's presentation, supplemented by comments from Wallace Davis, executive director of the Department of Air Pollution Control, pointed out the benefits implementation of the federal law would have on public health, the environment, and energy conservation. The air in three Virginia regions (Hampton Roads, the Richmond metropolitan area, and Northern Virginia) exceeds the federal hydrocarbon standard of 0.120 parts per million (ppm) hourly. These regions have been declared nonattainment areas and would be most affected by state implementation plans. Hampton Roads (0.130 ppm) is a marginal nonattainment area; the Richmond metropolitan area (0.142 ppm) is a moderate nonattainment area; and Northern Virginia (0.165 ppm) is a serious nonattainment area. The more serious an area's air pollution problem, the more aggressive will be the measures required to deal with it. Specifically motor vehicle-related measures range from required use of "Stage II" vapor recovery devices at fueling facilities and imposition of vehicle emissions inspection and maintenance programs to mandatory clean-fuel fleet vehicle programs.

Ms. Major's characterization of the federal Clean Air Amendments of 1990 as a "health bill" was a theme also addressed in a presentation by Kevin R. Cooper, who addressed the group on behalf of the American Lung Association. Dr. Cooper pointed out that both the number of motor vehicles and the number of people in Virginia are growing and that unless prompt and effective action is taken, air pollution will get worse and the incidence of air pollution-related disease will increase.

Dr. Cooper suggested that the federal hydrocarbon standard of 0.120 ppm may be too high and that a standard of 0.08 may be more appropriate. The American Lung Association supports three actions to address the situation:

- Use of reformulated gasoline in all gasoline-fueled vehicles (in the short term);
- Implementation of a statewide centralized enhanced vehicle emissions inspection and maintenance program (using facilities that only perform emissions inspections, rather than stations that also perform safety inspections and vehicle repairs); and
- Implementation of California's low-emission vehicle (LEV) program statewide in Virginia (in the long term).

CNG Conversion Experiment

The joint subcommittee was briefed by Thomas T. Keehan and John Nye of the University of Virginia's Department of Mechanical and Aero-

space Engineering on their conversion of a three-quarter ton GMC V-8 pickup truck from gasoline fuel to compressed natural gas (CNG). Mr. Nye and Mr. Keehan told the group that considerable engine emission improvement could result from a "simple system" conversion without prohibitive expense and without significant loss of power. They stressed the need for adequate training of mechanics responsible for performing conversions and maintaining converted vehicles. A lack of adequate training, they concluded, can result in poor vehicle performance, higher than necessary maintenance costs, and consumer rejection of CNG-powered vehicles.

California LEV Program

The idea of adoption of the California LEV program was also discussed by Susan Sonnenberg, speaking on behalf of Mobil Oil Corporation. Ms. Sonnenberg reminded the joint subcommittee that the 1990 Clean Air Amendments did not require adoption of the California program in Virginia, that many elements of the California program are not yet in place, and that neither the efficacy nor the costs of the LEV program have yet been proven. Recommendations by the Ozone Transport Commission (OTC) that Virginia and other states represented on the OTC adopt the LEV program lack technical justification, she felt, and any proposals for a California-style LEV program for Virginia should be subjected to careful study prior to action by the legislature.

Fleet Conversion Program

Gene Dishner, director of the Virginia Department of Mines, Minerals and Energy, told the group that the strategy to use \$400,000 in oil overcharge revenues to implement the Governor's energy plan through grants to assist local governments in converting portions of their vehicle fleets to alternative fuels is going forward. Local efforts might receive additional assistance, he reported, from a soon-to-be-

announced program of the U.S. Department of Energy, which will make funds available for purchase of school buses powered by dedicated natural gas engines. Virginia localities could "piggy-back" federal and state funds under these two programs to make use of alternative fuels financially even more feasible, he suggested.

Recommended Legislation

Following the day's presentations, the subcommittee discussed legislation to be recommended to the 1992 Session of the General Assembly. The subcommittee agreed on two proposals: (i) a resolution continuing the present study until the conclusion of the Virginia Department of Transportation's clean fuels demonstration project (scheduled to begin in early 1992) and (ii) a resolution noting the progress made to date in promoting alternative fuels and commending the various state and federal agencies for their actions in support of this process.

◆
The Honorable Arthur R. Giesen, Jr.,
Chairman
Legislative Services contact:
Alan B. Wambold

HJR 456: Commission on Local Government Structures and Relationships

◆
November 19, 1991, Richmond

HJR 456 (1991) reconstituted the commission, which had been authorized to study (i) the relationships among the Commonwealth's local governments, (ii) the relationships between local governments and the Commonwealth, (iii) the desirability of continuing the independent city system, and (iv) the problems caused by annexation.

The commission's recommendations were set out in HB 550 (1990), which was carried over to the 1991 Session. Due to the economic downturn in the nation and the Commonwealth, certain financial incentives in the bill were no longer feasible and the bill was withdrawn.

The Virginia Association of Counties (VACO) and the Virginia Municipal League (VML), which had formed task forces to follow the commission's deliberations and render advice and assistance, requested that their task forces be given the opportunity during the summer of 1991 to revise HB 550. Thus, the commission was reconstituted for the sole purpose of receiving the task forces' report and redrafting its recommendations based on the report and the economic situation in Virginia.

The reconstituted commission held its first meeting on November 19, at which time VACO and VML reported that despite the expenditure of time and money, they had failed to agree on a course of action.

In view of this result, no further action by the commission is anticipated.

◆
The Honorable George W. Grayson, Chairman
Legislative Services contact: C.M. Conner, Jr.

The Legislative Record summarizes the activities of all Virginia legislative study commissions and joint subcommittees. Published monthly in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

E.M. Miller, Jr. Director
R. J. Austin Manager, Special Projects
K. C. Patterson Editor
James A. Hall Designer

Special Projects, Division of Legislative Services
910 Capitol Street, 2nd Floor, Richmond, Virginia 23219 804/786-3591

The Legislative Record is also published monthly in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are being published as a separate section of the Register beginning with the October 7, 1991, issue. The new section appears at the beginning of each issue.

VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

Request for Review of Draft Document

The 1990 reauthorization of the Coastal Zone Management Act (CZMA), as amended, established under § 309 a new Coastal Zone Enhancement Grants Program which sets aside from 10% to 20% of the states' federally-approved Coastal Zone Management funds to encourage the states to seek to achieve one or more of eight legislatively defined coastal management objectives. The states are to achieve these objectives by implementing changes to their coastal management programs; for instance, by amending their laws, regulations, or boundaries or by other means that improve management of their coastal resources.

As part of this process, the Council on the Environment is completing an assessment of the eight management objectives identified in the legislation, specifically:

- The protection, enhancement, or creation of coastal wetlands;
- The prevention or significant reduction of threats to life and property through the control of coastal development and redevelopment in hazardous areas, and the anticipation and management of sea level rise;
- The development of increased opportunities for public access;
- The reduction of marine debris by managing uses and activities contributing to marine debris;
- The development and adoption of procedures to address the cumulative and secondary impacts of coastal growth and development;
- The preparation and implementation of special area management plans;

- The development of plans for the use of ocean resources; and

- The adoption of procedures and policies to facilitate the siting of energy facilities and government facilities as well energy-related facilities and government activities which may be of greater than local significance.

The Council is requesting public comment on a draft of the assessment which will be made available for public review in mid-November, 1991. The public comment period will extend for 30 days. Written comments may be sent to the Council at the address shown below. In addition, the Council will accept oral comments at its upcoming quarterly meeting.

Copies of the assessment may be obtained at the Council on the Environment offices, located at 202 N. 9th Street, Suite 900, Richmond, Virginia. Copies may also be obtained by contacting, Lee Tetrault, Chesapeake Bay and Coastal Programs, Council on the Environment, 202 N. 9th Street, Suite 900, Richmond, Virginia 23219, telephone (804) 786-4500.

Following consideration of public comments, a final assessment will be produced by January 10, 1992. A multi-year strategy, addressing priority state concerns identified in the assessment, will be developed by the end of February 1992. The assessment and strategy will provide the basis by which the Council will apply for § 309 grant funds from the National Oceanic and Atmospheric Administration for use under Virginia's Coastal Resources Management Program.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Public Notice

In accord with the Anti-Drug Abuse Act of 1988 (Public Law 100-690, Title VI, Subtitle C), the Department of Criminal Justice Services announces its intention to submit an application for federal funds to the Bureau of Justice Assistance, U.S. Department of Justice.

The application will be submitted no later than December 27, 1991, and will request \$9,996,000 in federal funds, which is Virginia's allocation for federal fiscal year 1992 under the Drug Control and System Improvement Formula Grant Program. The funds will be used by the Department to make grants to localities and state agencies to support drug control and criminal justice system improvement projects.

General Notices/Errata

In addition to the Standard Form 424, "Application for Federal Assistance," the Department's submission to the Bureau of Justice Assistance contains a statewide drug and violent crime strategy which analyzes the state's drug and violent crime problems, identifies needs and priorities, and indicates ways the Department proposes to use the federal funds to address the needs and priorities.

Public review of the application and comment on it are invited. Single copies may be obtained by contacting Richard Hall-Sizemore, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, telephone (804) 371-6507.

COUNCIL ON THE ENVIRONMENT

Public Notice

Notice of Availability for Public Review

An Environmental Impact Assessment for an Exploratory Oil or Gas Well to be Drilled in Essex County, Virginia

Purpose of Notice: This notice informs the public of the availability of an environmental impact assessment for an oil or gas well drilling operation as required by Virginia Code § 62.1-195.1(D). The public is invited to review and comment on the environmental impact assessment. A general description of the proposed activity, its location, and the content of the environmental impact assessment follow.

Location: Texaco, Inc. has proposed locating an exploratory oil or gas well in Essex County. The site for the exploratory well is to be located about two miles from the town of Supply, Virginia, on a tract of land bordered by state route 639 on the west and state route 675 on the north. The proposed project can be located on the Supply Quadrangle, USGS topographic map, 7.5 minute series. The proposed well site and associated lease boundaries are generally described in the accompanying map.

Project Description: The proposed exploratory well drilling operation will be conducted to evaluate the potential for marketable quantities of oil or gas resources to exist in the Taylorsville Basin located in Tidewater, Virginia. The proposed drilling operation would require 3 to 4 weeks for site preparation, 12 to 14 weeks for drilling, 4 to 6 weeks for completion and testing as warranted, and 3 to 4 weeks for site restoration. The area to be directly affected by exploratory drilling operations is approximately 3.5 acres. The site will be located in an agricultural field currently planted in soybeans. Employees will live on-site during operations, water will be provided by a groundwater well, and there will be on-site sewage treatment facilities. The well site will be designed to contain the discharge of all fluids generated within the drill site. The drilling operations will be conducted 24 hours per day.

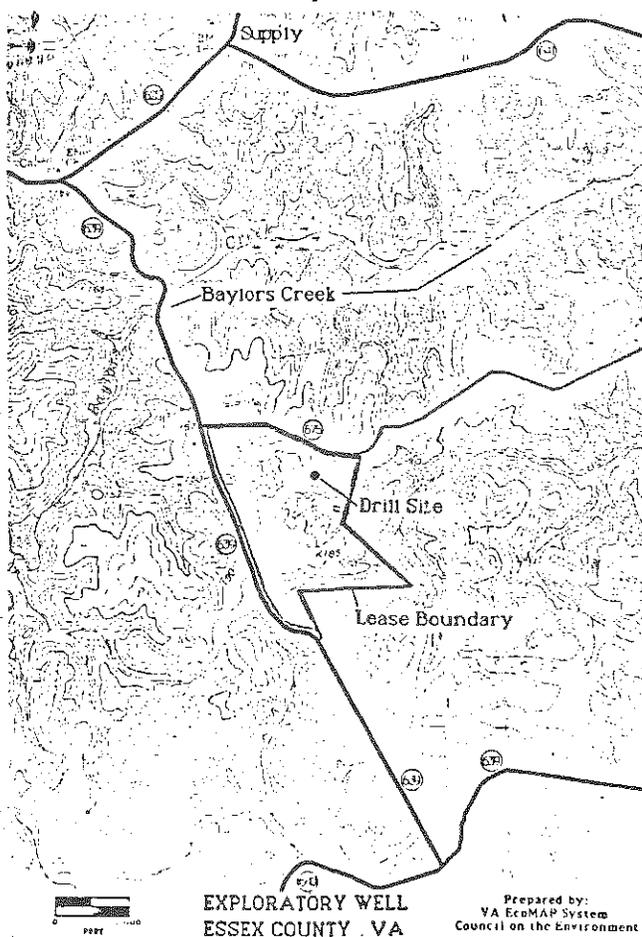
The environmental impact assessment submitted for the proposed project includes a description of the proposed well drilling site and the vicinity, a description and evaluation of the potential environmental impacts that may result if the exploratory well is constructed, an assessment of the potential environmental impact that may result from accidental release events, and control measures designed to minimize impacts from proposed drilling operations. A discussion of the types and magnitude of environmental impacts which may occur as a result of the longer-term production activities is included in the assessment should the exploratory well prove successful.

Location of the Assessment: A copy of the environmental impact assessment may be reviewed during regular business hours at the offices of the Council on the Environment, 202 North Ninth Street, 9th Floor, Suite 900, Richmond, Virginia. Another copy of the assessment will be available for review at the Essex County Public Library located in Tappahannock, Virginia, on Route 17. The library hours are 9:30 a.m. to 5 p.m. on Monday, Tuesday, and Friday; 9:30 a.m. to 7 p.m. on Wednesday and Thursday; and 10 a.m. to 1 p.m. on Saturday.

Deadline for Public Comment: Written comments on the environmental impact assessment may be submitted until 5 p.m. January 10, 1992. Comments must be addressed to:

Keith J. Buttleman
Virginia Council on the Environment
202 North Ninth Street
Richmond, Virginia 23219

Contact: For additional information, contact Jay Roberts at the address indicated above or call (804) 786-4500, SCATS 786-4500, or (804) 371-7604/TDD ☎



DEPARTMENT OF HEALTH (STATE BOARD OF)

Public Notice

The State Board of Health has received a request from a group composed of well drillers and other individuals from Tidewater to amend the Private Well Regulations pertaining to Class IV (non-drinking water) wells. They propose two major changes:

1. Reduce the minimum separation distance between Class IV wells and building foundations treated by a chemical termiticide to 10 feet. The proposed minimum separation distance in the regulations is 25 feet if certain well construction and site conditions exist.
2. Allow the issuance of a well construction permit for Class IV wells immediately upon filing an application with a site plan and payment of the application fee. This permit would be issued without the local health department conducting a site visit to determine the proposed well site suitability. The well site would be

subject to a post-construction inspection and approval by the local health department.

Comments on these proposals should be submitted to Gary L. Hagy, Assistant Director, Bureau of Sewage and Water Services, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218. Comments should be received by January 3, 1992.

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the Federal level. Therefore, the Virginia Department of Labor and Industry is issuing the following notice:

U.S. Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910

Docket No. H-122

RIN 1218-AB37

Occupational Exposure to Indoor Air Pollutants; Request for Information

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Request for Information.

SUMMARY: In the September 20, 1991 issue of the Federal Register, the Occupational Safety and Health Administration (OSHA) published a notice of request for information on issues pertinent to indoor air quality in occupational environments (56 FR 47892). This notice raises major issues which OSHA needs to consider in determining whether regulatory action is appropriate and feasible to control health problems related to poor indoor air quality. The issues on which comment is requested are organized into five broad categories: (1) Definition of and Health Effects Pertaining to Indoor Air Quality; (2) Monitoring and Exposure Assessment; (3) Controls; (4) Local Policies and Practices; and (5) Potential Content of Regulations.

In addition to seeking information regarding Indoor Air Quality concerns in general, issues addressed in this notice

General Notices/Errata

also focus on specific indoor air contaminants, such as passive tobacco smoke (PTS), radon and bioaerosols. With respect to these particular contaminants, information is requested on their relative contribution to the overall degradation of indoor air quality as well as associated health effects and methods of exposure assessment and mitigation. The information received in response to this notice will assist OSHA to determine whether it is necessary and appropriate to pursue regulatory action concerning occupational exposures to indoor air contaminants.

DATES: Written comments concerning this notice of request for information on issues pertinent to occupational exposure to indoor air pollutants must be postmarked on or before January 21, 1992.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket No. H-122, room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-7894.

An additional copy of your comments should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 423-8151.

† Notice to the Public

The Safety and Health Codes Board adopted the following Federal OSHA Standards at its meeting on November 26, 1991:

1. Technical Amendments to the Safety Standards for Stairways and Ladders Used in the Construction Industry, 1926.1050 through 1926.1060.

Effective date is February 1, 1992.

2. Extension of the Partial Stay to the Amendment to the General Industry and Construction Industry Standards for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, 1910.1001 and 1926.58.

Effective date is November 27, 1991.

3. Extension of Administrative Stay to the General Industry Standard for Occupational Exposure to Formaldehyde, 1910.1048(m)(1)(i) through (m)(4)(ii).

Effective date is November 27, 1991.

Contact person for additional information: John J. Crisanti,

Director of Office of Enforcement Policy, (804) 786-2384.

† Notice to the Public

Statement of Final Agency Action

Virginia Occupational Safety and Health Standards for the General Industry

Extension of Partial Stay to Amendment to the General Industry Standard for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, 1910.1001, 1926.58

VR 425-02-10

On November 26, 1991, the Virginia Safety and Health Codes Board adopted an Extension of the Partial Stay to the Amended Standard to the Final Rule of the Virginia Occupational Safety and Health Standards for General Industry entitled, "VR 425-02-10, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, 1910.1001 and 1926.58."

The effective date of the stay is November 27, 1991, and it will remain in effect until February 28, 1992, to allow OSHA to complete supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

† Notice to the Public

Statement of Final Agency Action

Virginia Occupational Safety and Health Standards for the General Industry

Extension of Partial Stay to Amendment to the General Industry Standard for Occupational Exposure to Formaldehyde

VR 425-02-35

On November 26, 1991, the Virginia Safety and Health Codes Board adopted an additional extension of the administrative stay for Occupational Exposure to Formaldehyde - § 1910.1048(m)(1)9i).

The effective date of the stay is November 27, 1991, and it will remain in effect until February 4, 1992.

VIRGINIA CODE COMMISSION

NOTICE 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.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Title of Regulation: VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Telecommunications Equipments.

Publication: 8:5 VA.R. 693-700 December 2, 1991

Correction to Proposed Regulation:

Page 693, § 1.1, definition of "Family" should read, "Family" means the applicant, his dependents, and any person legally required to support the applicant, including spouses."

Page 693, § 1.1, definition of "Gross income" should read, "Gross income" means the income, total cash receipts before taxes from all sources of the applicant, his dependents and any person legally required to support the applicant, including spouses."

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Title of Regulation: VR 675-01-02. Board for Waterworks and Wastewater Works Operators Regulations.

Publication: 8:4 VA.R. 610-623 November 18, 1991

Correction to Final Regulation:

Page 613, beneath the table, strike "This table is provided for information only and does not supercede the text of the regulations."

Page 615, § 2.3, subdivision B 5a, line 8, should read, "...a total of at least 2 1/2 years..."

Page 615, § 2.3, subdivision B 5c, line 6: Add the word "or" after "Class II."

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



DEPARTMENT FOR THE AGING

Governor's Advisory Board on Aging

January 14, 1992 - 10 a.m. – Open Meeting

January 15, 1992 - 9:30 a.m. – Open Meeting

The Jefferson Hotel, Franklin and Adams Street, Richmond, Virginia. ☒ (interpreter for deaf provided upon request)

The sessions will consist of committee meetings, business meetings and joint meetings with the Virginia Association of Area Agencies on Aging.

Contact: Cathy Saunders, Special Assistant to the Commissioner, 700 E. Franklin Street, 10th Floor, Richmond, VA 23219, telephone (804) 225-2272, toll-free 1-800-552-3402 or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

January 16, 1992 - 10 a.m. – Open Meeting

January 17, 1992 - 9 a.m. – Open Meeting

Virginia Department of Agriculture and Consumer Services, Board Room No. 204, 1100 Bank Street, Richmond, Virginia. ☒

Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m., January 17, 1992. The board anticipates hearing a presentation on pesticides by a speaker, yet to be determined, at 8 p.m., January 16, 1992, following their dinner, at the Commonwealth Park Suites Hotel, Ninth and Bank Streets, Richmond, VA.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, Richmond, VA 23219, telephone (804) 371-6558.

Virginia Apple Board

February 20, 1992 - 10 a.m. – Open Meeting

1219 Stoneburner Street, Staunton, Virginia. (Interpreter for deaf provided upon request)

The board convenes to conduct matters of business affecting the Virginia Apple Industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Clayton O. Griffin, Director, P.O. Box 24401, Staunton, VA 24401, telephone (703) 332-7790.

DEPARTMENT OF AIR POLLUTION CONTROL

† January 3, 1992 - 6:30 p.m. – Public Hearing

Pamplin Administration Building, 14016 Boyton Plank Road, Dinwiddie, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to consider a permit to construct and operate a 220 MW cogeneration power plant by Cogentrix of Dinwiddie, Inc.

Contact: Mark Williams, Senior Environmental Engineer, 9210 Arboretum Parkway, Suite 250, Richmond, VA,

Telephone (804) 323-2409 or (804) 371-8471/TDD ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

† **January 6, 1992 - 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 Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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

Board for Architects

† **January 23, 1992 - 9:30 a.m.** — Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from November 7, 1991, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

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

Board for Interior Designers

† **January 10, 1992 - 1 p.m.** — Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to approve minutes from April 25, 1991, meeting and to review correspondence.

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

Board for Land Surveyors

† **January 9, 1992 - 9 a.m.** — Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from September 13, 1991, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

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

COMMISSION FOR THE ARTS

† **January 15, 1992 - 12:15 p.m.** — Open Meeting
The Valentine Museum, 1015 East Clay Street, Richmond, Virginia. ☒

A quarterly business meeting.

Contact: Wanda T. Smith, Executive Secretary, 223 Governor Street, Richmond, VA 23219-2010, telephone (804) 225-3132.

ASAP POLICY BOARD - CENTRAL VIRGINIA

† **January 29, 1992 - 7 p.m.** — Open Meeting
Central Virginia Alcohol Safety Action Program Policy Board, 2316 Atherholt Road, Suite 200, Lynchburg, Virginia.

A meeting regarding program activities and future operations.

Contact: L. T. Townes, P.O. Box 4345, Fort Hill Station, Lynchburg, VA 24502, telephone (804) 528-4073.

ASAP POLICY BOARD - VALLEY

† **January 13, 1992 - 8:30 a.m.** — Open Meeting
Augusta County School Board Office, Fishersville, Virginia. ☒

A regular meeting of the local policy board to conduct business pertaining to (i) court referrals; (ii) financial reports; (iii) director's reports; and (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, 2 Holiday Court, Staunton, VA 24401, telephone (703) 886-5616 or (Waynesboro #) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

January 16, 1992 - 9:30 a.m. — Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-7390.

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **January 17, 1992 - 10 a.m.** — Open Meeting
Virginia Housing Development Authority, 601 Belvidere Street, Conference Room #1, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

Calendar of Events

A meeting to (i) consider requests for interpretation of the Virginia Uniform Statewide Building Code; (ii) consider appeals from the rulings of local appeal boards regarding application of the Virginia Uniform Statewide Building Code; and (iii) approve minutes of previous meeting.

Contact: Jack A. Proctor, 205 N. 4th Street, Richmond, VA 23219, telephone (804) 371-7772.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **January 17, 1992 - 10 a.m.** – Open Meeting
DIT Auditorium, 110 South 7th Street, Richmond, Virginia.
☒ (Interpreter for deaf provided upon request)

The board will consider “other lands” provisions and buffer area provisions of Preservation Areas and status of local Preservation Act programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by January 10, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

January 30, 1992 - 10 a.m. – Open Meeting
Virginia Housing Development Authority, Conference Room #1, 601 South Belvidere Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by January 23, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

February 27, 1992 - 10 a.m. – Open Meeting
Virginia Housing Development Authority, Conference Room #1, 601 South Belvidere Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by February 20, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA

23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

† **March 26, 1992 - 10 a.m.** – Open Meeting
State Water Control Board, Conference Room, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by March 19, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Central Area Review Committee

† **January 13, 1992 - 1 p.m.** – Open Meeting
Middle Peninsula Planning District Commission, Business 17, Saluda, Virginia. ☒ (Interpreter for deaf provided upon request)

† **January 27, 1992 - 1 p.m.** – Open Meeting
James City County Offices, 101A Mounts Bay Road, Williamsburg, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area Programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meetings. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† **January 8, 1992 - 10 a.m.** – Open Meeting
† **January 22, 1992 - 10 a.m.** – Open Meeting
† **February 12, 1992 - 10 a.m.** – Open Meeting
† **February 26, 1992 - 10 a.m.** – Open Meeting
† **March 11, 1992 - 10 a.m.** – Open Meeting
† **March 25, 1992 - 10 a.m.** – Open Meeting
Council on the Environment, Conference Room, 9th Street Office Building, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area Programs for the Northern Area. Persons interested in observing should call the

Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meetings. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Regulatory Review Committee and Program Study Group

† January 15, 1992 - 10 a.m. - Open Meeting

† February 19, 1992 - 10 a.m. - Open Meeting

Monroe Building, Meeting Room C, 101 North 14th Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

† March 18, 1992 - 10 a.m. - Open Meeting

Monroe Building, Meeting Room E, 101 North 14th Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will consider issues relating to Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01. No public comment will be taken.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

† January 15, 1992 - 10 a.m. - Open Meeting

† February 5, 1992 - 10 a.m. - Open Meeting

† February 19, 1992 - 10 a.m. - Open Meeting

† March 4, 1992 - 10 a.m. - Open Meeting

† March 18, 1992 - 10 a.m. - Open Meeting

Council on the Environment, Conference Room, 9th Street Office Building, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area Programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meetings. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY CARE COUNCIL

† January 9, 1992 - 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. A public comment period is scheduled for 1 p.m.

The contingent snow date for this meeting is January 17, 1992, same place and time of January 9, 1992, meeting.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

† January 14, 1992 - 10 a.m. - Open Meeting

Crestar Financial Corporation, Piedmont Room, 4th Floor, 919 East Main Street, Richmond, Virginia. ☒

A quarterly council meeting. Public comments will not be received at the meeting.

Contact: Margaret A. Smith, Acting Director, Virginia Council on Child Day Care and Early Childhood Programs, Suite 1116, Washington Building, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-8603.

BOARD OF COMMERCE

February 24, 1992 - 10 a.m. - Open Meeting

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A regular quarterly meeting. Agenda will likely consist of briefings from staff on the status of bills in the General Assembly that can have an impact upon agency operations, and agency regulatory programs.

Contact: Alvin D. Whitley, Secretary/Policy Analyst, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8564.

STATE BOARD FOR COMMUNITY COLLEGES

† January 21, 1992 - Time to be Determined - Open Meeting

Monroe Building, 15th Floor, 101 North 14th Street, Richmond, Virginia.

Calendar of Events

State board committee meetings.

† **January 22, 1992 - 9 a.m.** – Open Meeting
Monroe Building, 15th Floor, 101 North 14th Street,
Richmond, Virginia.

A regularly scheduled state board meeting. Agenda
available by January 8, 1992.

Contact: Joy Graham, Assistant Chancellor, Public Affairs,
Virginia Community College System, 101 N. 14th Street,
Richmond, VA 23219, telephone (804) 225-2126 or (804)
371-8504/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

† **January 17, 1992 - Noon** – Open Meeting
Planning Commission Conference Room, Fifth Floor, City
Hall, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program
Manager, Department of Conservation and Recreation, 203
Governor St., Suite 326, Richmond, VA 23219, telephone
(804) 786-4132 or (804) 786-2121/TDD ☎

Goose Creek Scenic River Advisory Board

January 8, 1992 - 2 p.m. – Open Meeting
The Law Offices of Shaw-Pittman, 201 Liberty Street,
Leesburg, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program
Manager, Department of Conservation and Recreation, 203
Governor St., Suite 326, Richmond, VA 23219, telephone
(804) 786-4132 or (804) 786-2121/TDD ☎

Virginia Soil and Water Conservation Board

† **January 16, 1992 - 9 a.m.** – Open Meeting
Farm Credit, Mechanicsville, Virginia.

A bi-monthly meeting.

Contact: Donald L. Wells, Department of Conservation and
Recreation, 203 Governor St., Suite 206, Richmond, VA
23219, telephone (804) 786-2064.

VIRGINIA COUNCIL ON COORDINATING PREVENTION

† **January 17, 1992 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 Belvidere
Street, Richmond, Virginia. ☒

A quarterly meeting to review pending legislative
activity relating to prevention and other business to be
determined by the council.

Contact: Ron Collier, Director, P.O. Box 1797, Richmond,
VA 23214, telephone (804) 786-1530.

BOARD OF CORRECTIONS

January 8, 1992 - 10 a.m. – Open Meeting
February 12, 1992 - 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 to the board.

Contact: Mrs. Vivian Toler, Secretary to the Board, 6900
Atmore Drive, Richmond, VA 23225, telephone (804)
674-3235.

Liaison Committee

January 9, 1992 - 9:30 a.m. – Open Meeting
February 13, 1992 - 9:30 a.m. – Open Meeting
6900 Atmore Drive, Board of Corrections Board Room,
Richmond, Virginia. ☒

A meeting to address criminal justice issues.

Contact: Louis E. Barber, Sheriff, Montgomery County, P.O.
Drawer 149, Christiansburg, VA 24073, telephone (703)
382-2951.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

NOTE: CHANGE IN PUBLIC HEARING DATE
February 12, 1992 - 10 a.m. – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the State Board of
Corrections intends to amend regulations entitled: **VR**
230-30-006. Work/Study Release Standards for Local
Facilities. The proposed regulations establish the
minimum operational standards for work or study
release programs in local correctional facilities.

Statutory Authority: §§ 53.1-5 and 53.1-131 of the Code of
Virginia.

Written comments may be submitted until January 3, 1992.

Contact: Mike Howerton, Chief of Operations, 6900 Atmore
Drive, Richmond, VA 23225, telephone (804) 674-3041.

BOARD FOR COSMETOLOGY

† **January 13, 1992 - 9 a.m.** – Open Meeting
† **February 3, 1992 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia.

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Board for
Cosmetology, Department of Commerce, 3600 West Broad
Street, Richmond, VA 23230, telephone (804) 367-2175.

CRIMINAL JUSTICE SERVICES BOARD

† **January 8, 1992 - 11 a.m.** – Open Meeting
State Police Training Academy, Room 335, Richmond,
Virginia. ☐

A meeting to consider matters related to the board's
responsibilities for criminal justice training and
improvement of the criminal justice system.

Contact: Paula J. Scott, Staff Executive, Department of
Criminal Justice Services, 805 East Broad Street,
Richmond, Virginia 23219, telephone (804) 786-4000.

Committee on Training

† **January 8, 1992 - 9 a.m.** – Open Meeting
State Police Training Academy, Room 335, Richmond,
Virginia. ☐

A meeting to discuss matters relating to training for
criminal justice personnel.

Contact: Paula J. Scott, Staff Executive, Department of
Criminal Justice Services, 805 East Broad Street,
Richmond, Virginia 23219, telephone (804) 786-4000.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

March 6, 1992 - 1 p.m. – Public Hearing
Virginia Housing Development Authority, 601 South
Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Board of Criminal
Justice Services intends to adopt regulations entitled:
**VR 240-04-3. Rules Relating to the Court-Appointed
Special Advocate Program (CASA).** The purpose of
the proposed regulation is to regulate the operation of
local Court-Appointed Special Advocate programs.

Statutory Authority: §§ 9-173.7 and 9-173.8 of the Code of
Virginia.

Written comments may be submitted until February 3,

1992, to Francine Ecker, Department of Criminal Justice
Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula J. Scott, Executive Assistant, Department of
Criminal Justice Services, 805 East Broad Street,
Richmond, Virginia 23219, telephone (804) 786-8730.

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† **April 1, 1992 - 2:30 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 Criminal Justice
Services Board intends to adopt regulations entitled:
**VR 240-04-2. Rules Relating to the Forfeited Drug
Asset Sharing Program.** The purpose of the proposed
regulation is to regulate the administration of the
Forfeited Drug Asset Sharing Program.

STATEMENT

Basis: Pursuant to the provisions of §§ 19.2-386.4,
19.2-386.10 and 19.2-386.14 of the Code of Virginia, the
Criminal Justice Services Board intends to promulgate
Rules Relating to the Forfeited Drug Asset Sharing
Program.

Purpose: The purpose of this regulation is for the
Department of Criminal Justice Services, as directed by
the General Assembly, to develop rules regarding the
administration of the Forfeited Drug Asset Sharing
Program.

Substance: The Department of Criminal Justice Services is
directed to establish by regulation, appropriate procedures
to administer the Forfeited Drug Asset Sharing Program.
Such regulations provide for the required forms to be
submitted by law-enforcement agencies for asset seizure
reporting, seized property disposition and sharing decisions
for joint jurisdictional seizures. Procedures are also set
forth for the remission of innocent property interests,
valuation of "in-kind" property, distribution of proceeds,
appeals that contest distribution, record-keeping and
financial reporting.

Issues: Rules relating to the Forfeited Drug Asset Sharing
Program will become effective on July 28, 1992, in order
to finalize the requirements and procedures of the
program as they are currently being administered by the
law-enforcement community in the Commonwealth of
Virginia.

Impact: These regulations will affect all law-enforcement
agencies or offices that participate in the seizure and
forfeiture of drug assets. This includes police, sheriffs,
commonwealth's attorneys, judges, etc.

Agencies choosing to participate in the Forfeited Drug
Asset Sharing Program will benefit from the cash and

Calendar of Events

"in-kind" proceeds that will be used for law enforcement purposes only. Any costs incurred to manage the program will be deducted from forfeited proceeds.

Statutory Authority: §§ 19.2-386.4, 19.2-386.10 and 19.2-386.14 of the Code of Virginia.

Written comments may be submitted until February 28, 1992.

Contact: Paula J. Scott, Executive Assistant, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-8730.

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

January 21, 1992 - 4 p.m. -- Public Hearing
Virginia School for the Deaf-Blind, 700 Shell Road, Hampton, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard of Hearing intends to amend regulations entitled: **VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Telecommunications Equipment.** The regulations are used to (i) screen individuals with hearing losses and speech problems who apply for telecommunications equipment through the Telecommunications Assistance Program; (ii) determine contributions, if any; and (iii) ensure confidentiality. It also ensures that the department retains ownership of equipment costing \$5,000 or more. Consideration is being given to expanding range of telecommunications equipment.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until February 2, 1992.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard of Hearing, Washington Building, Capitol Square, 1100 Bank Street, 12th Floor, Richmond, Virginia 23219, telephone (804) 225-2570/Voice/TDD ☎ or toll-free 1-800-552-7917/Voice/TDD ☎

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† January 9, 1992 - 6 p.m. -- Public Hearing
J.S. Reynolds Community College, Parham Road Campus, Richmond, Virginia.

† January 14, 1992 - 6 p.m. -- Public Hearing
Virginia School for the Deaf-Blind, Staunton, Virginia.

† January 18, 1992 - Noon -- Public Hearing
Holiday Inn-South Hill, South Hill Virginia.

† January 21, 1992 - 6 p.m. -- Public Hearing
Virginia School for the Deaf-Blind, 700 Shell Road, Hampton, Virginia.

† January 28, 1992 - 6 p.m. -- Public Hearing
Fairfax, Virginia

† January 31, 1992 - 6 p.m. -- Public Hearing
New River Community College, Dublin, Virginia.

† February 1, 1992 - 2 p.m. -- Public Hearing
Holiday Inn-Norton, Norton, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard of Hearing intends to amend regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** These regulations are used to establish guidelines for assessing transliterating or interpreting skills of individuals who wish to achieve a VQAS screening level.

STATEMENT

Basis, Purpose, Substance, Issues and Impact: The Virginia Department of Deaf and Hard of Hearing (VDDHH) promulgated "Regulations Governing Interpreter Services for the Hearing Impaired" in 1989. (Proposed revision of title: "Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.") These regulations, in response to the need to identify qualified interpreters to satisfy code mandates, include guidelines for the administration of the Virginia Quality Assurance Screening (VQAS). The VQAS is designed to assess the skills of sign language interpreters and transliterators.

Since that time, VDDHH has recognized the need to expand the screening process to include other systems of manual communication, such as Cued Speech. The proposed regulations include guidelines for assessment of Cued Speech transliterators. Cued Speech is a method of using hand shapes to supplement lip reading and is used primarily in educational settings. Translitterators who use this method should subscribe to the same high standards set forth in the QAS sign language assessment. The inclusion of a Cued Speech assessment will see that those standards are met, ensuring equal access to information and opportunity for quality education for individuals who are deaf or hard of hearing that utilize Cued Speech.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until February 28, 1992.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard of Hearing, Washington Building, Capitol Square, 1100 Bank Street, 12th Floor, Richmond, Virginia 23219, telephone (804) 225-2570/Voice/TDD ☎ or toll-free 1-800-552-7917/Voice/TDD ☎

BOARD OF DENTISTRY

January 18, 1992 - 10 a.m. – Open Meeting
Northern Virginia Community College, 8333 Little River
Turnpike, Annadale, Virginia. ☐

January 22, 1992 - 11:30 a.m. – Open Meeting
Alcoholic Beverage Commission, 4907 Mercury Boulevard,
Hampton, Virginia. ☐

Informal conferences.

January 29, 1992 - 1 p.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive,
Richmond, Virginia. ☐

Informal conferences beginning at 1 p.m. Legislative committee meeting at 5:30 p.m. Examination committee meeting at 7:30 p.m. Endorsement committee meeting at 8:30 p.m. Advertising committee meeting at 9 p.m. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

January 30, 1992 - 8:30 a.m. – Open Meeting

January 31, 1992 - 8:30 a.m. – Open Meeting

A meeting to receive committee reports, conduct regular board business and conduct formal hearings. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, VA, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

January 6, 1992 - 9 a.m. – Public Hearing
Monroe Building, 101 North 14th Street, Rooms C and D,
Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: **VR 270-01-0054. Regulations Governing Reporting of Acts of Violence and Substance Abuse in Schools.** The proposed regulations will establish a format and timeliness for local school divisions to report to the Department of Education certain acts of violence and substance abuse.

Statutory Authority: § 22.1-280.1 of the Code of Virginia.

Written comments may be submitted until January 6, 1992.

Contact: H. Douglas Cox, Principal Specialist, Virginia Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2871.

LOCAL EMERGENCY PLANNING COMMITTEE

† **January 8, 1992 - 3 p.m. – Open Meeting**
12 Rouss Avenue, Winchester/Frederick Economic Development Commission Meeting Room, Winchester, Virginia.

Contact: L.A. Miller, Fire Chief, Winchester Fire & Rescue Department, 126 N. Cameron Street, Winchester, VA 22601, telephone (703) 662-2298.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

January 2, 1992 - 5:30 p.m. – Open Meeting
February 6, 1992 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia. ☐

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Linda G. Furr, Assistant Emergency Services, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - NEW KENT COUNTY

January 16, 1992 - 7:30 p.m. – Open Meeting
New Kent County Administration Building, New Kent, Virginia. ☐

An annual meeting to review the New Kent County Hazardous Materials Response Plan as required by SARA Title III.

Contact: J. Lawrence Gallaher, Director of Public Safety, P.O. Box 50, New Kent, VA 23124, telephone (804) 966-9680.

BOARD OF FORESTRY

† **January 9, 1992 - 9 a.m. – Open Meeting**
Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ☐

A general business meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.

Calendar of Events

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

367-1000.

† **January 7, 1992 - 9 a.m.** - Open Meeting
1601 Rolling Hills Drive, Surry Building, Conference Rooms
1 and 2, Richmond, Virginia. ☒

State licensure examinations will begin at 9 a.m.

Board meeting and formal disciplinary hearing will
begin at 10 a.m. Public comment period will take
place at 10 a.m. until 10:30 a.m.

† **January 8, 1992 - 9 a.m.** - Open Meeting
† **February 5, 1992 - 9 a.m.** - Open Meeting
1601 Rolling Hills Drive, Surry Building, Richmond,
Virginia. ☒

Informal hearings.

† **February 4, 1992 - 9 a.m.** - Open Meeting
1601 Rolling Hills Drive, Surry Building, Richmond,
Virginia. ☒

A full board meeting. Public comment period will be
from 9 a.m. to 9:30 a.m.

† **February 6, 1992 - 9 a.m.** - Open Meeting
Martinsville City Hall, Circuit Court Room, 55 West Church
Street, Martinsville, Virginia. ☒

Formal hearings.

Contact: Meredyth P. Partridge, Executive Director, 1601
Rolling Hills Drive, Richmond, VA 23229-9907, telephone
(804) 662-9907 or (804) 662-7197/TDD ☎

DEPARTMENT OF GAME AND INLAND FISHERIES

† **January 16, 1991 - 9:30 a.m.** - Open Meeting
4010 West Broad Street, Richmond, Virginia.

Committees of the Board of Game and Inland
Fisheries will meet, beginning at 9:30 a.m. with the
Wildlife and Boat Committee, followed by the Liaison,
Planning, Finance Committees and ending with the
Law and Education Committee. Discussion will focus
on topics appropriate to each committee's
responsibility.

† **January 17, 1991 - 9 a.m.** - Open Meeting
4010 West Broad Street, Richmond, Virginia.

A meeting to review any possible legislation that might
affect the department. In addition, proposed deer
farming regulations will be reviewed, as well as other
possible general and administrative matters that might
be necessary.

Contact: Belle Harding, Secretary to Bud Bristow, 4010
West Broad Street, Richmond, VA 23230, telephone (804)

DEPARTMENT OF GENERAL SERVICES

January 31, 1992 - Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Department of
General Services intends to adopt regulations entitled:
**VR 330-05-01. Regulations for the Approval of Field
Tests for Detection of Drugs.** The purpose of the
proposed regulation is to establish requirements for
approval of field tests for drugs by the Division of
Forensic Science, Department of General Services.

Statutory Authority: §§ 2.1-424 and 19.2-188.1 of the Code
of Virginia.

Written comments may be submitted until January 31,
1992.

Contact: Paul B. Ferrara, Division Director, Division of
Forensic Science, 1 North 14th Street, Richmond, VA
23219, telephone (804) 786-2281.



DEPARTMENT OF HEALTH (STATE BOARD OF)

† **February 10, 1992 - 9 a.m.** - Public Hearing
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 amend regulations entitled: **VR
355-30-000-06. Virginia Medical Care Facilities
Certificate of Public Need Rules and Regulations.**
The proposed regulations amend the existing Virginia
Medical Care Facilities Certificate of Public Need
(COPN) Rules and Regulations in order to implement
the COPN Program to be consistent with the amended
COPN law which became effective July 1, 1991.

STATEMENT

Summary, purpose, need: The regulations incorporate
amendments to the certificate of public need (COPN) law
that became effective on July 1, 1991. With the exception
of the process for batching applications (Part V), these
regulations were first promulgated as Emergency
Regulations effective July 1, 1991. The amendments

implement changes to the COPN program which were recommended by Howard Cullum, Secretary of Health and Human Resources, to the Commission on Health Care for All Virginians in his November 1990 report. The amendments require him to continue his study of the COPN program and prepare a report due by November 1, 1992. The amendments expand the current registration requirements to include capital expenditures of one million dollars or more made by or on behalf of affected medical providers and also require the submission of periodic data reports by owners of registered services. The confidentiality of such data is protected until the registered services become operational. The amendments also provide for limitations on cost overruns and schedules for completion of authorized projects. Project approvals may also be conditioned on an agreement by the applicant to provide specialized services or reduce the cost of care to indigents.

Additionally, the Board of Health is authorized to establish an application fee structure based on the capital cost of a proposed project. The fees are to be applied to the administration and operation of the COPN program. Financial penalties of \$100 per day per violation are imposed on providers who fail to comply with registration or data reporting requirements and those who fail to comply with any assurances made as a condition for approval of a certificate.

The amendments also extend the deadline for the sunset of COPN requirements for hospitals and ambulatory surgery centers from July 1, 1991, to July 1, 1993, and extend the moratorium on the issuance of certificates for nursing homes from June 30, 1991, until June 30, 1993. The amendments also require nursing home bed projects approved prior to January 1, 1991, to be completed by June 30, 1992, and revocation of certificates for such projects not completed by this date or the expiration date of any approved extension.

Finally, the amendments allow the COPN review function to be modified to include an application batching process with a procedure to request applications for certain types of proposals. Therefore, the review process in the proposed regulations is structured to allow the simultaneous reviews of projects for the same or similar services according to an annual schedule.

Impact: Changes proposed at this time will bring the rules and regulations in full compliance with recent amendments to the Virginia Medical Care Facilities Certificate of Public Need Law. The proposed regulations allow the agency to collect data through the registration and reporting requirements. This data will be used by Secretary Cullum to continue his study of the COPN program and to prepare the reports required by the amendments. The changes also allow the agency to collect application fees. The monies collected will be used to offset the expenses for administering the COPN program.

Other changes pertain to the project review function and

monitoring of authorized projects. These changes provide a systematic schedule (or batching) of project reviews of the same type and should allow better distribution of the COPN agency workload. There are also additional exceptions to the current nursing home moratorium which may result in slight increases in the numbers of projects submitted for review. However, changes to the project review function will allow better time management and, therefore, should compensate for the additional project workload on agency staff. Finally, the regulations continue to reflect amendments to the COPN law which became effective on July 1, 1990, and provide certain exceptions to the moratorium on the issuance of COPNs for nursing home bed additions.

The cost to the agency associated with the amendments are related to the collection and tabulation of the data that will be obtained from affected medical care facilities and services. Additionally, there are costs associated with the review of applications submitted by those who may qualify for the additional exception to the moratorium on nursing home bed additions. However, these costs are offset, in part, by the application fees which will be collected on the projects submitted for review.

The 1991 code revisions state that "the Board of Health shall establish a schedule of fees for applications for certificates to be applied to expenses for the administration and operation of the certificate of public need program. Such fees shall not exceed the lesser of one-half of one percent of the proposed expenditure for the project or \$5,000" (§ 32.1-102.2). Using current applications history, the agency estimated that the Division of Resources Development appropriation would increase by \$78,464 in the current year and in each year of the upcoming biennium. The 1992 Budget bill is expected to reflect this increase. With the support of the fee revenue, the division will be able to absorb operating cost increases necessitated by the new processes outlined in these regulations.

There are also costs associated with the completion of the forms by those health care providers affected by the new registration and reporting requirements. However, the data collected through the use of the forms will allow the Commonwealth to meet the requirements of the law and to refine its COPN policies.

The batching provisions will also require the industry to plan health care projects in advance to be able to comply with agency review schedules. This may encourage more comprehensive planning on the part of providers. However, there are also provisions for review of projects in response to emergency situations at any time. This project review function under the batching system should enable more comprehensive statewide planning of medical care facilities by the state agency.

Forms: There are two new forms which are used in conjunction with the proposed regulation changes. These include a form for registering capital expenditures of one

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million dollars or more made by or on behalf of affected medical providers and a form for reporting information on registered services and equipment. The agency considered the comments of the regulated industry in developing the proposed forms.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 of the Code of Virginia.

Written comments may be submitted until February 28, 1992.

Contact: Paul E. Parker, Director, Division of Resources Development, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-7463.

BOARD OF HEALTH PROFESSIONS

† January 21, 1991 - 10:30 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

A regular quarterly meeting. Agenda includes consideration of need for statutory certification of therapeutic recreation specialists and the appropriate supervision requirements for dental hygienists in nontraditional settings. Public comments will be received at noon.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☒

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

January 15, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The proposed regulation will amend regulations to require health care institutions to file certified audited financial statements with the council no later than 120 days after the end of the institutions' fiscal year. A 30-day extension could be granted for extenuating circumstances. A late charge of \$10 per working day would be assessed for filings submitted past the due date.

Statutory Authority: §§ 9-158, 9-159 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until January 15, 1992.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad

St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☒

January 27, 1992 - 7 p.m. - Open Meeting
Medical College of Hampton Roads, Hofeimer Hall, 7th Floor Board Room, 725 Fairfax Avenue, Norfolk, Virginia. ☒

The council will conduct its monthly meeting. Public comment is welcome. Public comments must be limited to three minutes; written statements requested.

Contact: Kim Schulte Barnes, Information Officer, 805 East Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☒

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† March 15, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The proposed amendments (i) waive the audit requirement and the imposition of a penalty if an "extenuating circumstance," such as a bankruptcy proceeding, exists; (ii) require the filing of an institution's historical and its certified audited financial statement prior to acceptance by council of the filing of a subsequent year's budget or the filing of any request for an interim rate increase; and (iii) require each individual licensed health care institution to submit filings, but that the screening process would still be applied to allow for hospital systems to be analyzed systemwide by the Virginia Hospital Rate Review Program.

STATEMENT

Basis and authority: Section 9-158(C) of the Code of Virginia allows for modification of reporting requirements to avoid unduly burdensome costs in meeting the requirements of the uniform system of financial reporting.

Section 9-159(A)(2) of the Code of Virginia requires each health care institution to file a certified audited statement of income and expenses after the close of a health care institution's fiscal year.

Section 9-164(2) of the Code of Virginia provides that the council shall "from time to time make such rules and regulations as may be necessary to carry out its responsibilities."

Analysis: The first proposed regulatory change would allow the council to waive the requirement for a facility to file a certified audited financial statement in certain extenuating circumstances. This will allow the council to

waive this requirement in situations such as when an institution is involved in a bankruptcy proceeding, has closed, has had a change of ownership, or has just opened. The current regulation does not allow for any such exceptions.

The second proposed regulatory change is a further attempt by the council to ensure that all required filings will be submitted in a timely fashion.

The third proposed regulatory change will require health care institutions that are part of a hospital or nursing home system to submit separate filings for each institution. A number of individual hospitals and nursing homes who are competitors of other hospitals, and nursing homes that are part of chains have indicated that the council's annual report does not provide facility specific financial information. This change will allow the council to rectify that problem.

Estimated impact: The proposed change will allow for more timely and correct analysis of the information that is being obtained by the council from hospitals and nursing homes. There should be no additional costs to health care institutions to comply with any of these proposed changes.

Forms: There will be no new forms needed to implement this regulatory change.

Assurance: Representatives from the hospital and nursing home industries who serve on the council were among those who proposed these changes and all who were in attendance at the November 26, 1991, meeting supported the proposed changes. Staff of the council will work closely with the Virginia Hospital Association as well as the Virginia Health Care Association and the Virginia Non-profit Homes for the Aging during the public comment period. All of these organizations were notified of these proposed changes prior to the November 26, 1991, council meeting.

Statutory Authority: §§ 9-158, 9-159 and 9-164 of the Code of Virginia.

Written comments may be submitted until March 15, 1992.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

VIRGINIA HISTORIC PRESERVATION FOUNDATION

January 8, 1992 - 9:30 a.m. – Open Meeting
James Monroe Building, Conference Room B, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A general business meeting.

Contact: Hugh C. Miller, Director, 221 Governor Street, Richmond, VA, telephone (804) 786-3143 or (804)

786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 7, 1992 - 9 a.m. – Open Meeting
February 4, 1992 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

† **January 16, 1992 - 9 a.m. – Open Meeting**
Seventh Floor Conference Room, 205 North Fourth Street, Richmond, Virginia. ☒

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, Deputy Director, Building Regulation, Department of Housing and Community Development, 205 North Fourth St., Richmond, VA 23219, telephone (804) 786-4752 or (804) 786-5405/Voice/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

January 14, 1992 - 7 p.m. – Public Hearing
Fourth Floor Conference Room, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to adopt regulations entitled: **VR 425-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens, and in Orchards.** Provision of regulations concerning child labor in agriculture.

Statutory Authority: §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114 of the Code of Virginia.

Written comments may be submitted until October 28, 1991.

Contact: John J. Crisanti, Director, Office of Enforcement

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Policy, Powers-Taylor Building, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

LIBRARY BOARD

January 21, 1992 - 9:30 a.m. - Open Meeting
Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss administrative matters.

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

January 14, 1992 - 10 a.m. - Open Meeting
Department of Planning and Budget, Ninth Street Office Building, Room 409, Richmond, Virginia.

A regular meeting to consider such matters as may be presented.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices by January 7, 1992.

Contact: Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☐

STATE LOTTERY BOARD

† **January 27, 1992 - 10 a.m. - Open Meeting**
† **February 24, 1992 - 10 a.m. - Open Meeting**
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2210 W. Broad Street, Richmond, VA 23901, telephone (804) 367-9433.

MARINE RESOURCES COMMISSION

January 28, 1992 - 9:30 a.m. - Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately 2 p.m.: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 594-7933.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

January 3, 1992 - 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: **State Plan for Medical Assistance Relating to Case Management for the Elderly. VR 460-03-3.1102. Case Management Services.** This regulation proposes to make permanent policies which are substantially the same as the existing emergency regulation.

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

Written comments may be submitted until 4:30 p.m., January 3, 1992, to Ann E. Cook, Eligibility and Regulatory Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

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January 17, 1992 - 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: **Fee-for-Service Reimbursement for Home Health Services. VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates-Other Types of Care. VR 460-03-4.1923. Establish Rate Per Visit.** This regulation proposes to make permanent the policy providing for the fee for service reimbursement to home health agencies which is currently in place with an emergency regulation.

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

Written comments may be submitted until 4:30 p.m., January 3, 1992, to Betty Cochran, Director, Division of Quality Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

January 17, 1992 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1190. Amount, Duration, and Scope of Services: State Plan for Medical Assistance Relating to Reduction of Threshold Days for Hospital UR and Second Surgical Opinion Program.** The purpose of the proposed regulation is to promulgate permanent regulations to supersede the existing emergency regulations which provide for substantially the same policies.

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

Written comments may be submitted until 4:30 p.m., January 17, 1992, to Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

January 31, 1992 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1. Nursing Home Payment**

System (PIRS). This regulation proposes to promulgate permanent regulations to supersede three existing emergency regulations providing for mortgage debt refinancing, nursing facility rate change, and technical language changes.

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

Written comments may be submitted until 4:30 p.m., January 31, 1992, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

BOARD OF MEDICINE

February 3, 1992 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The board proposes to further define supervisory responsibilities of the licensed physical therapist for traineeship, on-site supervision of the physical therapy assistant in the work area, and further define the work settings of patient care.

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

Written comments may be submitted until February 3, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

February 3, 1992 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-05-01. Regulations Governing the Practice of Physician's Assistants.** The board proposes to amend §§ 3.4 and 5.1 B to require biennial renewal of license in each odd numbered year on the licensee's birth month and substitute the term "license" for "certification" to conform with the Code of Virginia, throughout the regulations.

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

Written comments may be submitted until February 3, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Advisory Board on Physical Therapy

January 17, 1992 - 9 a.m. - Open Meeting

Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) review and discuss regulations, bylaws, procedure manuals; (ii) receive reports; and (iii) discuss other items which may come before the advisory board. Public comments will not be received.

† March 6, 1992 - 9 a.m. - Open Meeting

Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) review and respond to public comments on proposed regulations, bylaws, procedure manuals; (ii) receive reports; and (iii) discuss other items which may come before the advisory board. Public comments will be received at the pleasure of the chairperson.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Mental Retardation Advisory Council

† January 15, 1992 - 10 a.m. - Open Meeting

James Madison Building, 8th Floor Conference Room, 109 Governor Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A quarterly meeting to conduct business relative to the council's responsibility for advising the State Mental Health, Mental Retardation and Substance Abuse Services Board on issues pertaining to mental retardation. Agenda will be available January 15, 1992.

Contact: Stanley J. Butkus, Ph.D., Director, MR Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-1746.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† January 22, 1992 - 10 a.m. - Open Meeting
Central Office, James Madison Building, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be published on January 15. The agenda may be obtained by calling Jane Helfrich.

Tuesday: Committee Meeting - 7:30 p.m. - Informal Session - 8 p.m.

Wednesday: Regular Session - 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-3921.

DEPARTMENT OF MOTOR VEHICLES

January 3, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal existing regulations entitled **VR 485-10-8401. Public Participation Guidelines** and adopt new regulations entitled: **VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation**. The board proposes to repeal the existing regulation and establish new guidelines for receiving input and participation from interested citizens in the development of any regulation which the department proposes.

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

Written comments may be submitted until January 3, 1992.

Contact: Peggy S. McCrerey, Planning Director, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0429.

Medical Advisory Board

January 8, 1992 - 1:15 p.m. - Open Meeting
DMV, 2300 West Broad Street, Richmond, Virginia. ☒

A regular business meeting open to the public.

Contact: Dan Byers, DSA Administrator, DMV, 2300 W. Broad Street, Richmond, VA 23220, telephone (804) 367-1836.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

January 15, 1992 - 9 a.m. – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets,
Richmond, Virginia. ☒

The meeting will include reports from the executive, finance, education and exhibits, marketing, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the October meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, VA 24112, telephone (703) 666-8616, SCATS (703) 857-6959/857-6951 or (703) 666-8638/TDD ☎

NORFOLK STATE UNIVERSITY

Board of Visitors

† **January 7, 1992 - 9 a.m. – Open Meeting**
Harrison B. Wilson Hall, Administration Building, Board Room, Norfolk, Virginia. ☒

A regular meeting of the board.

Contact: Gerald D. Tyler, Norfolk State University, 2401 Corprew Avenue, Wilson Hall-S340, Norfolk, VA 23504, telephone (804) 683-8373.

BOARD OF NURSING

† **January 27, 1992 - 9 a.m. – Open Meeting**
† **January 28, 1992 - 9 a.m. – Open Meeting**
† **January 29, 1992 - 9 a.m. – Open Meeting**
Department of Health Professions, Conference Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A regular meeting to consider (i) matters related to nursing education programs; (ii) discipline of licensees; (iii) licensure by examination and endorsement; and (iv) other matters under the jurisdiction of the board.

Public comment will be received during an open forum session beginning at 11 a.m. on Monday, January 27, 1992.

Contact: Corrine F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

Education Advisory Committee

† **January 14, 1992 - 10 a.m. – Open Meeting**
Department of Health Professions, Conference Room 3,

1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A regular meeting to consider matters related to educational programs approved by the Board of Nursing and make recommendations to the board as needed.

Public comment will be accepted at 1 p.m.

Contact: Corrine F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

Examination Committee

† **January 7, 1992 - 8:30 a.m. – Open Meeting**
Department of Health Professions, Board of Nursing Office, 1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

The committee will convene in open session and go into Executive Session for the purpose of reviewing the National Council Licensing Examination for Registered Nurses. The meeting will reconvene in open session prior to adjournment.

Public comment will not be received.

Contact: Corrine F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

January 9, 1992 - 9 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒

National and state examinations for nursing home administrators.

January 21, 1992 - 8:30 a.m. – Open Meeting
January 22, 1992 - 8:30 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A board meeting to review continuing education submittals regarding licensure renewal.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9111.

BOARD OF PHARMACY

January 22, 1992 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room #3, Richmond, Virginia.

A board meeting. Public comments will be accepted at

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the beginning of the meeting or any appropriate occasion during the meeting.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9911.

Regulatory Review Committee

January 7, 1992 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room #2, Richmond, Virginia.

Regulatory review committee meeting.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9911.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **January 9, 1992 - 10 a.m. - Open Meeting**
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting to (i) review budget contingency plans for 1992-94; (ii) review new projects proposed for education; and (iii) review master plan/procedures status reports.

Contact: Linda Hardwicke, Administrative Assistant to the Virginia Public Telecommunications Board, 110 South Seventh Street, 1st Floor, Richmond, VA 23219, telephone (804) 344-5522.

REAL ESTATE APPRAISER BOARD

January 18, 1992 - Written comments may be submitted until this date.

Department of Commerce, 3600 West Broad Street, 3rd Floor, Room 395, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board is withdrawing the proposed regulation published in 8:2 VA.R. 206-226 October 21, 1991 and will adopt new regulations entitled: **VR 583-01-03. Real Estate Appraiser Board Regulations.** The purpose of the proposed regulations is to establish the qualifications for licensure and standards of practice for real estate appraisers.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Written comments may be submitted until January 18, 1992.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2175.

† **January 21, 1992 - 9 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A business meeting to adopt final rules and regulations.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2175.

REAL ESTATE BOARD

January 5, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **VR 585-01-1. Virginia Real Estate Board Licensing Regulations.** The proposed regulations relate to the licensing and conducting of real estate business in accordance with established standards.

Statutory Authority: §§ 9-6.14:1, 54.1-201 and 54.1-2105 of the Code of Virginia.

Written comments may be submitted until January 5, 1992.

Contact: Joan L. White, Assistant Director, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

January 4, 1992 - 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 Social Services intends to amend regulations entitled: **VR 615-33-01. Fee Requirements for Processing Applications.** This regulation contains the requirements and procedures for licensees to follow in submitting the application processing fee which is to be submitted with all new and renewal applications. It also includes a provision for a \$15 fee to be charged for checks which must be returned to the applicant because of insufficient funds.

Statutory Authority: §§ 63.1-25, 63.1-174.01 and 63.1-196.5 of the Code of Virginia.

Written comments may be submitted until January 4, 1992.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

† January 15, 1992 - 2 p.m. - Open Meeting
† January 16, 1992 - if necessary - 9 a.m. - Open Meeting
Department of Social Services, 8007 Discovery Drive, Richmond, Virginia. ☒

Work session and formal business meeting of the aforementioned board.

Contact: Phyllis Sisk, Staff Specialist, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229, telephone (804) 662-9236, toll-free 1-800-552-3431 or 1-800-552-7096/TDD ☒

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January 17, 1992 - 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 Social Services intends to amend regulations entitled: **VR 615-01-36. General Relief (GR) Program - Locality Options.** The purpose of the proposed amendment is to allow local departments of Social Services to continue options for assistance provided from the General Relief Program.

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

Written comments may be submitted until January 17, 1992, to Ms. Diana Salvatore, Program Manager, Medical Assistance Unit, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

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† January 21, 1992 - 5 p.m. - Public Hearing
Municipal Building, Room 450, 25 Church Avenue, S.W., Roanoke, Virginia.

† January 23, 1992 - 4 p.m. - Public Hearing
Wythe Building, 1st Floor Conference Room, 1604 Santa Rosa Road, 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 adopt regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Group Family Day Care Homes.** The proposed regulation makes major additions and revisions in the licensing standards caused by changes in the Code of Virginia relating to a group family day care homes and deemed necessary to update licensing requirements which have not been significantly revised since 1979.

STATEMENT

Subject: Promulgation of the Minimum Standards for Licensed Group Family Day Care Homes.

Basis: Section 63.1-196 of the Code of Virginia, as amended by the 1990 General Assembly, requires the licensure of a group family day care home. Section 63.1-202 provides the statutory basis for the State Board of Social Services to prescribe general standards for group family day care homes.

Purpose: The purpose of the minimum standards for licensed group family day care homes is to reflect major additions and revisions in the licensing standards caused by changes in the name and definition of a family day care home as mandated by the 1990 General Assembly and deemed necessary to update licensure requirements which have not been significantly revised since 1979. The provisions of this regulation become effective on July 1, 1992.

Substance: The 1990 amendments to the licensing statute dictate maintaining the licensure threshold of no fewer than six children received for care and establish that no more than twelve children may be received for care in the group family day care home. The proposed standards include the following significant requirements:

Provider requirements, including but not limited to Central Registry Checks on all members of household and employees, training in first aid plus an additional six hours training annually in an area related to child care;

Physical Plant requirements, including but not limited to, prohibition of smoking while children are in care, individual space for children and accessible to children two years of age and older, requirements for adequate space indoors and outdoors, requirements for safe storage of a variety of hazardous materials and objects, home kept free of insects and rodents, laundering of linens used by children weekly or as needed, notification of parents and department of unlisted telephone numbers, identifying and providing for fire and emergency protections and procedures;

Programs and services requirements for children, includes but is not limited to, sufficient supply and variety of age appropriate play equipment or material, children not left in care of someone who is not an adult, staffing ratios, requirements when transporting children, toileting and diapering guidelines, guidelines for supervision and positive discipline;

Meal and nutrition requirements, includes but is not limited to, use of pasteurized milk and powered milk for cooking purposes only, restricts use of microwaves in heating baby bottles, restricts certain foods for children under three years old, designates refrigerator and freezer temperatures, provides for supplementing

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meals that children bring from home to assure nutritional needs met, pets not permitted in food preparation areas;

Record keeping requirements, includes but is not limited to, a record for each child with provisions for confidentiality, medication log and documentation of injuries/accidents; and

Parental involvement requirements, includes permitting parents access to the home whenever children are in care.

Issues: This regulation addresses the following issues which impact group family day care homes subject to licensure by the Department of Social Services: providers, household, physical environment and equipment, care of children, physical health, records and parental involvement.

Impact: This regulation will affect group family day care homes licensed by the Department of Social Services. As of September 30, 1991, there were 422 family day care homes licensed by the Department of Social Services, which have a total licensure capacity of 3,550 children.

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

Written comments may be submitted until February 28, 1992.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

* * * * *

† February 28, 1992 -- 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 Social Services intends to repeal regulations entitled: VR 615-25-01. Minimum Standards for Licensed Family Day Care Homes. The existing regulation, Minimum Standards for Licensed Family Day Care Homes, is proposed for repeal while concurrently promulgating Minimum Standards for Licensed Group Family Day Care Homes.

STATEMENT

Subject: Repeal of the Minimum Standards for Licensed Family Day Care Homes.

Basis: Sections 63.1-195 and 63.1-196 of the Code of Virginia, as amended by the 1990 General Assembly, change the definition of family day care home to that of group family day care home and require the licensure of a group family day care home. Section 63.1-202 of the Code of Virginia provides the statutory basis for the State

Board of Social Services to prescribe general standards for group family day care homes.

Purpose: The regulation, Minimum Standards for Licensed Family Day Care Homes, is being proposed for repeal, effective July 1, 1992, and upon promulgation of new regulations, Minimum Standards for Licensed Group Family Day Care Homes, VR 615-25-01:1, effective July 1, 1992. Maintaining the existing regulations would be in conflict with the statutory mandates.

Substance: The 1990 amendments to the licensing statute require the promulgation of regulations for licensure and operation of group family day care homes versus maintaining the substance of the current regulations relative to family day care homes subject to licensure in the Commonwealth. Regulations for group family day care homes need to be promulgated to accommodate corresponding changes in the law effective July 1, 1992.

Issues: This regulation addresses the following issues which impact group family day care homes subject to licensure by the Department of Social Services: personnel, household, physical environment and equipment, care of children, physical health, and records.

Impact: The repeal of the current regulations will have little or no effect on family day care providers and children in their care as new regulations will be promulgated concurrently. As of September 30, 1991, there were 422 family day care homes licensed by the Department of Social Services, which have a total licensure capacity of 3,550 children.

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

Written comments may be submitted until February 28, 1992.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD OF SOCIAL WORK

† January 10, 1992 - 9 a.m. -- Open Meeting

Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☐

A meeting to conduct general board business and certify oral examinations. No public comment will be received.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9914.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

January 6, 1992 - 11 a.m. – Open Meeting
Virginia Department of Commerce, Conference Room 1,
3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

VIRGINIA SWEET POTATO BOARD

March 11, 1992 - 7:30 p.m. – Open Meeting
Eastern Shore Agriculture Experiment Station, Route 1,
Box 133, Research Drive, Painter, Virginia. ☒

A meeting to discuss marketing, promotion, research and education programs for the state's sweet potato industry and to develop the board's annual budget. At the conclusion of other business, the board will entertain public comments for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Box 26, Onley, VA 23418, telephone (804) 787-5867.

DEPARTMENT OF TAXATION

January 24, 1992 - 9 a.m. – Public Hearing
Department of Taxation, Training Room, 2220 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-74.1. Nonprescription Drugs and Proprietary Medicines.** This regulation explains the exemption from the retail sales and use tax for nonprescription drugs and proprietary medicines.

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

Written comments may be submitted until February 14, 1992.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

COMMONWEALTH TRANSPORTATION BOARD

January 15, 1992 - 2 p.m. – Open Meeting
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Work session of the Commonwealth Transportation

Board and the Department of Transportation staff.

January 16, 1992 - 10 a.m. – Open Meeting
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting 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, 1491 East Broad Street, Richmond, VA 23219, telephone (804) 786-6670.

TRANSPORTATION SAFETY BOARD

NOTE: CHANGE IN MEETING TIME

January 23, 1992 - 10:30 a.m. – Open Meeting
Department of Motor Vehicles, Room 702, 2300 West Broad Street, Richmond, Virginia. ☒

A meeting to discuss various transportation safety topics and issues.

Contact: William H. Leighty, Deputy Commissioner, 2300 West Broad Street, Richmond, VA 23269, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

VIRGINIA RESOURCES AUTHORITY

January 14, 1992 - 9 a.m. – Open Meeting
February 11, 1992 - 9 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to (i) approve minutes of its previous meeting; (ii) review the Authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the Authority one week prior to the date of the meeting.

Public comments will be received at the beginning of the meeting.

Contact: Mr. Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX number (804) 644-3109.

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BOARD FOR THE VISUALLY HANDICAPPED

† **January 21, 1992 - 1:30 p.m.** — Open Meeting
397 Azalea Avenue, Richmond, Virginia. ☒ (f interpreter for deaf provided upon request)

A quarterly meeting to review policy and procedures of the Virginia Department for the Visually Handicapped. The board reviews and comments on the Department's budget.

Contact: Joseph A. Bowman, Executive Assistant, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

January 11, 1992 - 11 a.m. — Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (f interpreter for deaf provided upon request)

A quarterly meeting to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

January 9, 1992 - 10:30 a.m. — Open Meeting
Washington Building, 2nd Floor Board Room, 1100 Bank Street, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, Virginia 23219, telephone (804) 786-4326.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

† **February 24, 1992 - 10 a.m.** — Public Hearing
101 North 14th Street, Conference Room C, Richmond, Virginia.

† **February 26, 1992 - 1 p.m.** — Public Hearing
Room 2123, Amherst Building, Central Virginia Community College, Lynchburg, 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 adopt regulations entitled: **VR 672-20-11. Solid Waste Management Facility Permit Application Fees.** The purpose of the proposed regulation is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit or seeking an amendment to an existing permit for operation of a solid or infectious waste management facility in the Commonwealth.

STATEMENT

Basis: Section 10.1-1402(11) of the Virginia Waste Management Act contained in Chapter 14, Title 10.1, Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act. Section 10.1-1402(16) of the Act authorizes the board to collect solid waste management facility permit application fees and requires the board to establish a schedule of such fees by regulation.

Purpose: The Virginia Waste Management Board and the Director of the Department of Waste Management propose to promulgate the regulation entitled "Solid Waste Management Facility Permit Application Fees" (VR 672-20-11) which establishes schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit or seeking an amendment to an existing permit for operation of a solid or infectious waste management facility in the Commonwealth.

Substance and issues: At its 1990 session, the General Assembly authorized the Department of Waste Management to collect permit application fees from any person operating or proposing to operate a facility for storage, treatment, or disposal of nonhazardous solid waste to defray costs related to the issuance of permits. Based on the historical time-and-effort data and the more recent outcome of the process streamlining effort, the department is proposing a detailed schedule of fees that takes into account the type of facility (e.g. landfills, incinerators, resource recovery units, composting facilities, other miscellaneous facilities) as required by the Code. To meet the further requirement to consider the applicant's financial resources, the proposed fee schedule is set to recoup only a portion of the total costs associated with the issuance process. The proposed fees range from \$3,300 to \$17,500, about 80% of the total direct costs of issuance of a permit for a new facility. Fees for permit amendments are also proposed and reflect the same relationship to direct costs.

Based on the comments received during a series of public meetings, most local governing bodies are opposed to the imposition of permit application fees regardless of size. The few commenters that did not oppose the fees in principle stated that while the level of fees was reasonable, the time that it takes to receive a permit is

inordinately long and that some review limitations should be included in the proposed regulations. No such time limitation is being included in this regulation as it involves changes to the procedures addressed in the Virginia Solid Waste Management Regulations (VR 672-20-10), and must be addressed through the amendment to that regulation.

Impact: The fees imposed by these regulations will have a direct impact on private firms, regional authorities, and local governing bodies that own and operate solid waste management facilities. The number and type of existing solid waste management facilities that may be expected to apply for permits and permit amendments by the statutorily mandated date are shown below:

Breakdown of Active Facilities

Type of Facility	Government Owned	Privately Owned	Total
Sanitary Landfill	128 6	134	
Construction/Debris Landfill	10 26	36	
Industrial Landfill	2 35	37	
Other	20 9	29	
Total	160 76	236	

It is expected that a substantial majority of these facilities will apply for a permit by January 1, 1994. It is further estimated that new applications will be received by the department at an annual rate of ten applications after that date. Considering the normal expected active life of a solid waste management facility exceeds twenty years, the prorated costs associated with the fee program are an insignificant portion of both the design costs (approximately \$2000,000) and construction expenses (\$2 to 3 million) associated with such facilities. Based on these estimates, the fees are estimated to amount to less than 0.8% of initial costs.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted until March 1, 1992.

Contact: W. Gulevich, 101 N. 14th Street, Richmond, Virginia 23219, telephone (804) 371-2383.

† February 28, 1992 - 11 a.m. - Public Hearing
Virginia Department of Waste Management, 11th Floor,
Monroe Building, 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 Virginia Waste

Management Board intends to amend regulations entitled: VR 672-30-1. Virginia Regulations Governing the Transportation of Hazardous Materials. The purpose of the proposed amendments is to incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal Regulations from July 1, 1990, to June 30, 1991.

STATEMENT

Basis and authority: Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia directs the Virginia Waste Management Board to promulgate rules and regulations concerning the transportation of hazardous materials in the Commonwealth. These requirements are to be no more restrictive than applicable federal laws and regulations. Changes in the federal regulations promulgated from July 1, 1990, through June 30, 1991, necessitate an amendment to keep the Virginia Regulations Governing the Transportation of Hazardous Materials consistent with these regulations.

Purpose: The Virginia Waste Management Board and the Director of the Department of Waste Management promulgate these amended regulations in order to ensure that hazardous materials transported within the Commonwealth are loaded, packed, identified, marked, and placarded in order to protect public health and safety and the environment.

Impact: These requirements have already been through the federal rulemaking process and are in force in the interstate, and some intrastate, transport of hazardous materials. Therefore, this amendment is not expected to have a significant impact on the regulated community.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Written comments may be submitted until February 28, 1992, to John E. Fly, Virginia Department of Waste Management, 11th Floor, Monroe Building, Richmond, Virginia 23219.

Contact: C. Ronald Smith, Hazardous Waste Enf. Chief, Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 N. 14th Street, Richmond, Virginia 23219, telephone (804) 225-4761 or toll-free 1-800-552-2075.

STATE WATER CONTROL BOARD

January 14, 1992 - 7 p.m. - Public Hearing
Virginia Military Institute, Room 507, Nichols Engineering
Building, Lexington, Virginia. ☐

A public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0086967 for Young Life-Jump Mountain Sewage Treatment Plant, 120 Coles Cove Road, Weaverville, North Carolina 28787. The purpose

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of the hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the discharge on water quality or beneficial uses of state waters.

Contact: Lori Freeman Jackson, Hearings Reporter, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, 4900 Cox Road, Richmond, Virginia 23230-1143, telephone (804) 527-5163.

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January 27, 1992 - 7:30 p.m. - Public Hearing
Virginia Beach City Council Chambers, City Hall Building, Second Floor, Courthouse Drive, Virginia Beach, Virginia.

January 28, 1992 - 7:30 p.m. - Public Hearing
State Water Control Board, Board Room, Innsbrook Corporate Center, 4900 Cox Road, Richmond, Virginia.

January 29, 1992 - 7:30 p.m. - Public Hearing
Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

February 3, 1992 - 7:30 p.m. - Public Hearing
Spotsylvania County Board of Supervisors Room, County Administration Building, Route 208 at Spotsylvania Courthouse, Spotsylvania, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-15-02. Virginia Water Protection Permit Regulation.** The proposed regulation delineates the procedures and requirements to be followed for issuance of a Virginia Water Protection Permit. An informal question and answer period has been scheduled before each hearing. At that time, staff will answer questions from the public on the proposal. The questions and answer period will begin at 6:30 p.m. on the same day and at the same location as the public hearings.

Statutory Authority: § 62.1-44.15:5 of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 17, 1992, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Martin Ferguson, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5030.

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† January 21, 1992 - 7 p.m. - Educational Meeting
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia.

† January 22, 1992 - 6:30 p.m. - Educational Meeting

Randolph Hall 110, VPI&SU, Blacksburg, Virginia.

† January 23, 1992 - 2 p.m. - Educational Meeting
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

† February 10, 1992 - 7 p.m. - Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia. 7

† February 12, 1992 - 7 p.m. - Public Hearing
University of Virginia, Southwest Center, Classroom 1 and 2, Highway 19 North, Abingdon, Virginia.

† February 13, 1992 - 2 p.m. - Public Hearing
Lynchburg Public Library, Community Meeting Room, 2315 Memorial Avenue, Lynchburg, Virginia.

† February 19, 1992 - 7 p.m. - Public Hearing
James City County, Board of Supervisors Room, 101C Mounts Bay Road, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposal is to adopt, for statewide application, standards for toxics for protection of aquatic life and human health to comply with the Clean Water Act. The board will hold a formal hearing at a time and place to be established, if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23(b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Thursday, January 30, 1992.

STATEMENT

Basis: Section 62.1-44.15(3a) of the Code of Virginia authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established. This section also requires the Water Control Board, at least once every three years, to review the standards and policies, and as appropriate, to propose revisions and changes to the standards and policies. Such standards shall be adopted only after a hearing is held and the board takes into consideration water quality issues, public health standards and the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified or cancelled.

Purpose: Virginia last completed a comprehensive review of the water quality standards in September 1987. In order to comply with state and federal laws, another review of

The water quality standards is due. Therefore, the purpose of the proposed amendments is to make necessary revisions to the water quality standards to comply with the three year review requirement.

In May 1990, similar amendments were proposed to meet the three year review requirement. Those amendments were tabled by the board in September 1990 and withdrawn in December 1991. This rulemaking replaces the withdrawn proposal.

The primary objective of this triennial review is to adopt, for statewide application, standards for toxics for protection of aquatic life and human health to comply with the Clean Water Act § 303(c)(2)(B) which states that water quality standards must be adopted for § 307(a) toxic pollutants. Other changes have also been incorporated in order to meet federal requirements for antidegradation, facilitate implementation or clarify the standards and provide for variances and site specific modifications to these standards.

Impact: Economic impact to regulated community to meet numerical standards: These amendments will impose additional treatment costs upon any industrial, municipal or private permittee discharging levels that exceed the standards for one or more of the parameters proposed for inclusion in the regulation. Many facilities will be required to install additional wastewater treatment or discontinue use of the pollutant at the facility. The costs provided below are estimates made by State Water Control Board (SWCB) staff based on the best available information. The board seeks comment from the public on costs, including information relating to the accuracy of the costs below.

We reviewed effluent monitoring data from over 300 permitted outfalls contained in the Virginia Water Control Board toxics database and effluent data from permit applications, discharge monitoring reports and toxics management files to determine which discharges would exceed one or more of the instream proposed water quality standards. Of those reviewed, approximately one third exceeded one or more of the proposed standards. Most exceedences were to the metals standards for protection of aquatic life. The estimated treatment costs to remove pollutants to meet standards are listed in the following table:

Estimated Treatment Costs to Regulated Industries and Municipalities

<u>Parameter Removed</u>	<u>Capital Cost</u>	<u>Operating Cost</u>
Metals	\$93,348,000	\$33,882,000/year
Organics	\$464,380,000	\$47,870,000/year
Ammonia	\$78,303,000	\$8,279,000/year

Cost curves (effluent flow vs. cost) were developed for

construction, operation and maintenance of chemical precipitation (metals removal), carbon absorption (organics removal), and 2-stage nitrification (ammonia removal) to calculate the values in the above table. The costs in the above table have been updated to 1991 dollars using the Engineering News Record Index.

Capital costs to treat for metals removal would be approximately 93 million dollars with annual operating costs at approximately 34 million. Capital costs for organics removal is estimated at 464 million dollars with annual operating costs at 48 million. Most of the costs for organics removal would be to treat to levels that would meet human health standards (the above table lists costs at a 10-6 risk level). The implementation of the ammonia standard would also incur costs of approximately 78 million in capital costs and 8 million annually in operating costs. Because of the lack of data, small seafood processing and fish farming operations were not considered in calculating these ammonia costs. It is unknown how they will be impacted.

It should be noted that these regulations would have a positive impact on construction, equipment sales and installation industries. Also, there would be a positive economic impact on consultants for design of new treatment units and biological testing for site specific and variance studies. In addition, the seafood harvest in the Chesapeake Bay had a dockside value of over \$31 million last year and the total economic value of the seafood industry in Virginia is estimated to be \$442 million per year. These standards will help ensure that this valuable economic resource is protected from contamination by these toxic chemicals.

In addition, the SWCB recognizes that there are situations in which these proposed standards should not apply. Some permittees may be provided relief to these standards by taking advantage of the procedures also proposed in the regulation which allow the permittee the opportunity to attempt to demonstrate the need for a variance or a site specific modification to the water quality standard. These alternate limitations may be sought for the following circumstances: site specific factors that affect actual toxicity (e.g. biota of receiving stream may be resistant to higher levels of toxics or the naturally lower pH of the receiving stream may reduce toxicity of the effluent), certain uncontrollable conditions of the water body prevent the discharger from meeting the water quality standard, or because of socio-economic hardship to the surrounding community. Costs for a consultant to perform these demonstrations could range from \$50,000 to \$100,000.

Other costs to the regulated community: The facilities having these additional effluent limitations written into their discharge permits will also incur the cost of laboratory analysis in order to fulfill discharge monitoring requirements. Sampling frequency can range from once a day to once a month. The cost of performing a complete analysis for one sample is as follows: volatiles \$200, extractables \$395, metals and cyanide \$195, and pesticides

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and PCB's \$195. This cost figure would be lower if fewer parameters were incorporated into the permit. Permittees will also be required to present the necessary information at the time of permit application to characterize their effluent. This cost would be in the range of \$900 and would be imposed every five years.

Impact to meet antidegradation requirements: Because of the federal antidegradation requirements, some permittees will not be allowed to increase the volume or loading of their discharge unless they demonstrate that the change is justifiable to provide necessary economic or social development in the area in which the waters are located. The new antidegradation policy also sets up a category for exceptional waters where there will not be allowed, under any circumstances, any new or increased discharges. While there are no waters currently listed under that section, there exists the potential to limit economic development in an area through such a designation.

State impact: These amendments will also impact the State Water Control Board. The staffing and budget implications of these amendments are not fully known at this time. The work load will be monitored and assessed, and, if necessary, addressed in future budget requests.

This agency is in the process of upgrading its monitoring program and has implemented several programs already. This upgrade was partially done in support of upcoming standards for toxics. If sampling frequency is increased, this may result in the Division of Consolidated Laboratory Services requiring additional equipment, laboratory space and staff.

Environmental impact: If these parameters are adopted as standards, Virginia would be providing protection to aquatic life and human health as has never before been available. Virginia aquatic organisms are well represented in the national database used to develop the criteria. Over 85% of the most sensitive organisms in that database have representative populations in Virginia. Therefore, adoption of the national criteria as standards would protect sensitive aquatic species in Virginia. These regulatory amendments in conjunction with the Toxics Management Program would, through the application of effluent limitations and enforcement actions, provide necessary control and possible elimination of dangerous levels of toxic pollutants affecting aquatic life.

Adoption of the water quality standards for toxics will also help restore and protect the living resources of the Chesapeake Bay and their habitat. This approach addresses the agreement made by the Governors of the Bay states in the 1987 Chesapeake Bay Agreement. The water quality standards adopted include many of the toxic substances identified as harmful at specified levels to one or more selected target species or their food sources important to the Chesapeake Bay. The target species include key representatives of submerged aquatic vegetation, finfish, shellfish, waterfowl and other aquatic birds.

In addition, there are approximately 360 river miles in Virginia suitable for the propagation of endangered or threatened species and over 1500 stream miles of the highest quality trout streams. The implementation of these standards will result in increased stocks of these sensitive aquatic species resulting from reduced toxic stress and will benefit both the commercial and recreational fishing industries.

Human populations may be exposed to toxic compounds through drinking water and the consumption of aquatic organisms. With the adoption of human health standards, Virginia will increase protection of citizens from the toxic effects of these compounds which are discharged into state waters. If adopted as proposed, the human health standards will provide protection against carcinogens by limiting the risk to one additional cancer per 1,000,000 population. However, choosing the appropriate risk level is an option open to the board.

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

Written comments may be submitted until 4 p.m., March 2, 1992, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Jean Gregory, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5093.

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† **February 10, 1992 - 7 p.m.** – Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

† **February 14, 1992 - 2 p.m.** – Public Hearing
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-09. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.** The purpose of the proposal is to adopt as a permanent regulation the emergency regulation which became effective July 12, 1991, authorizing the issuance of a general permit for qualifying domestic sewage discharges of less than or equal to 1,000 gallons per day.

STATEMENT

Basis and statutory authority: Under the authority of §§ 62.1-44.15(5) and 62.1-44.15(10) of the Code of Virginia the State Water Control Board (SWCB) is authorized to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters an

to adopt such regulations as it deems necessary to enforce water quality management in the Commonwealth.

Sections 402, 318, and 405 of the Clean Water Act (ACT) and Chapter 3.1 and (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia, specifically §§ 62.1-44.15(5), 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.18:2 and 62.1-44.19 authorize the Commonwealth to administer the National Pollution Discharge Elimination System (NPDES) program. The authority for the SWCB to issue general permits is contained in the Permit Regulation (VR 680-14-01).

On May 20, 1991, the Regional Administrator of EPA Region III signed the modification of Virginia's National Pollutant Discharge Elimination System (NPDES) permit program delegation which authorized the Water Control Board to issue General VPDES Permits.

Substance and purpose of proposed regulation: Every discharge of treated wastewater to surface waters must have a permit according to federal and state law. Because domestic sewage discharges of less than or equal to 1,000 gallons per day are low impact point sources, they have a lower priority than other discharges when limited manpower resources are allocated to issuing permits. The General Permit is one way in which such discharges can be permitted with minimal resource commitment on the part of regulatory agencies and the regulated community.

In 1990, the General Assembly amended §§ 32.1-163 and 32.1-164 of the Code of Virginia to address the responsibilities of the State Board of Health as they relate to sewage disposal and inspections of alternative discharging sewage treatment systems. These systems are defined as discharges of treated sewage regulated by a General VPDES Permit issued by the Water Control Board to individual single family dwellings with flows less than or equal to 1,000 gallons per day. The Code mandates regular inspection of such systems and it empowers the Board of Health to establish requirements for maintenance contracts for these facilities. It also provides that upon final adoption of a General VPDES Permit by the Water Control Board, the Board of Health shall assume the responsibility of permitting alternative discharging sewage treatment systems.

In addition, this regulation will replace an emergency regulation which establishes a General VPDES Permit of the category of domestic sewage discharges of less than or equal to 1,000 gallons per day. This general permit will expedite the process of issuing permits to this category of discharges and reduce the regulatory burden on the permittee compared to the process of issuing individual VPDES permits. The regulation will allow the Department of Health to implement their legislative mandate to control the discharges from alternative discharging sewage treatment systems.

Impact: EPA approved the Water Control Board's VPDES General Permit Program on May 20, 1991. On June 19, 1991, EPA approved the VPDES General Permit for

domestic sewage discharges of less than or equal to 1,000 gallons per day. This general permit covers the single family home discharges. The board adopted the general permit as an emergency regulation on June 24, 1991, and it became effective on July 12, 1991. This emergency regulation will expire one year from its effective date. In order to continue to regulate discharges under the General Permit, it must be adopted as a permanent regulation by July 12, 1992.

Issuance of General VPDES Permits would reduce the application costs and paperwork burden for the dischargers. It will also reduce the administrative time and burden for the board in processing individual permits. Thus, it will improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on individual VPDES permits which have more potential for impacting water quality.

These proposed amendments could potentially impact all of the approximately 1,000 holders of individual VPDES permits for facilities designed to discharge 1,000 gallons per day or less of domestic sewage.

To date more than 200 dischargers have qualified for coverage under the General Permit issued pursuant to the emergency regulation presently in place. Failure to promulgate this regulation may jeopardize those dischargers.

Issues: In some cases, the low priority assigned to these small discharges has resulted in delays in issuing permits. These delays can impact a landowner's ability to construct and occupy a new home if the sewage treatment plant for the site is not permitted. Coverage under a General Permit would be a simpler and less expensive process than applying for an individual VPDES permit and fewer delays would be expected.

Public participation to date has elicited the following issues: the VPDES General Permit could accelerate development in areas where on-site sewage treatment limitations had previously restricted it, the potential lack of enforcement of the discharge limits mandated in the General Permit, and the appropriateness of the proposed effluent limitations and monitoring requirements.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., March 2, 1992, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5059.

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† February 12, 1992 - 2 p.m. - Public Hearing

Calendar of Events

Russel County Circuit Court Room, Main Street, Lebanon, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-00. Water Quality Standards (VR 680-21-08.15 Tennessee and Big Sandy River Basin, Clinch River Subbasin and VR 680-21-07.1 Special Standards and Requirements.** The purpose of the proposed amendment is to establish a site-specific numerical water quality criterion for copper in the Clinch River between Carbo and St. Paul. The board will hold a formal hearing at a time and place to be determined, if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23(b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Thursday, January 30, 1992.

STATEMENT

Basis: Section 62.1-44.15(3a) of the Code of Virginia authorizes the board to establish standards of quality and policies for any state water consistent with the purpose and general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established. Such standards shall be adopted only after a hearing is held and the board takes into consideration water quality issues, public health standards and the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified or cancelled. Section 62.1-44.15(10) of the Code of Virginia authorized the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. Site-specific modifications are authorized by VR 680-21-03.1 of the Water Quality Standards.

Purpose: Water quality standards establish the requirements for the protection of water quality and of beneficial uses of these waters. The purpose of the proposed amendments to VR 680-21-07.1 and VR 680-21-08.15 is to establish a site-specific modification to the numerical water quality criteria for copper in the Clinch River between Carbo and St. Paul at the request of Appalachian Power Company (APCo). Based on studies conducted by APCo, the proposed amendments would establish an instream acute criterion for copper of 19.5 ug/l and a chronic criterion for copper of 12.4 ug/l for the impacted 12.6 miles of the Clinch River which is approximately 25% more stringent than the existing state criterion.

Issues: Issues under consideration include:

1. To develop their criteria, APCo used the results of

tests measuring a reduction of enzyme activity. Is it appropriate to use the data from these tests to determine a site-specific criterion for copper using EPA's methodology for calculating criteria?

2. Should a Lowest Observed Adverse Effect Level from a sensitive test be used to determine a site-specific criterion?

3. To what stretch of the Clinch River should the special standard apply?

4. Is there a need for continued monitoring of the impacted area to determine if the mussel population is recovering?

Impact: APCo's hydroelectric power facility at Carbo would be required to upgrade the existing treatment facilities for metals removal to meet the proposed water quality standard, but the company's already planned treatment upgrade for compliance with § 304(1) of the Clean Water Act requirements should enable them to meet the proposed instream copper criteria without any additional costs over that already planned. No other dischargers would be impacted within the affected 12.6 mile segment of the Clinch River. No additional impact is anticipated to be placed on the board as a result of this proposed amendment. The board seeks comment on any impact the public believes to exist as a result of this proposed amendment.

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

Written comments may be submitted until 4 p.m., March 2, 1992, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Jean Gregory, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5093.

VIRGINIA WINEGROWERS ADVISORY BOARD

January 8, 1992 - 10 a.m. - Open Meeting
The Berkeley Hotel, Twelfth and Cary Streets, Richmond, Virginia.

A strategic planning session to access its current goals and objectives and set new priorities for the coming years.

Contact: Annette C. Ringwood, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank Street, Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

BOARD OF YOUTH AND FAMILY SERVICES

January 9, 1992 - 10 a.m. - Open Meeting
Fredericksburg, Virginia.

A general business meeting.

Contact: Paul Steiner, Policy Coordinator, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0692.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

January 8, 1992 - 7 p.m. - Public Hearing
Fredericksburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-30-001. Standards for Secure Detention Homes.** The purpose of the proposed regulation is to establish operating standards for the care and custody of youth in secure detention homes.

Statutory Authority: §§ 16.1-311 and 66-10 of the Code of Virginia.

Written comments may be submitted until January 31, 1992.

Contact: Paul Steiner, Policy Coordinator, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0692.

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES

† January 7, 1992 - 2 p.m. - Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The subcommittee will meet to develop recommendations and finalize proposed legislation. (HJR 380)

Contact: Jessica F. Bolecek, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

STATE WATER COMMISSION

† January 7, 1992 - 1:30 p.m. - Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia.

The commission will discuss issues pertaining to the State Water Commission's activities.

Contact: Martin G. Farber, Research Associate, or Deanna Sampson, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 2, 1992

Emergency Planning Committee, Local - Chesterfield County

January 6

† Alcoholic Beverage Control Board
Professional Soil Scientists, Board for

January 7

† Early Intervention Services for Infants and Toddlers with Disabilities, Joint Subcommittee Studying
† Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council
† Norfolk State University
- Board of Visitors
† Nursing, Board of
- Examination Committee
Pharmacy, Board of
- Regulatory Review Committee
† Water Commission, State

January 8

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Conservation and Recreation, Department of
- Goose Creek Scenic River Advisory Board
Corrections, Board of
† Criminal Justice Services Board
- Committee on Training
† Emergency Planning Committee, Local
† Funeral Directors and Embalmers, Board of
Historic Preservation Foundation, Virginia
Motor Vehicles, Department of
- Medical Advisory Board
Winegrowers Advisory Board, Virginia

January 9

† Architects, Land Surveyors, Professional Engineers and Landscape Architects, Board for
- Board for Land Surveyors
† Child Day-Care Council

Calendar of Events

Corrections, Board of
- Liaison Committee
† Forestry, Board of
Nursing Home Administrators, Board of
† Public Telecommunications Board, Virginia
Voluntary Formulary Board, Virginia
Youth and Family Services, Board of

January 10

† Architects, Land Surveyors, Professional Engineers
and Landscape Architects, Board for
- Board for Interior Designers
† Social Work, Board of

January 11

Visually Handicapped, Department for the
- Advisory Committee on Services

January 13

† ASAP Policy Board - Valley
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Cosmetology, Board of

January 14

Aging, Department for the
- Governor's Advisory Board on Aging
† Child Day Care and Early Childhood Programs,
Council on
Local Government, Commission on
† Nursing, Board of
- Education Advisory Committee
Virginia Resources Authority

January 15

Aging, Department for the
- Governor's Advisory Board on Aging
† Arts, Commission for the
† Chesapeake Bay Local Assistance Board
- Regulatory Review Committee and Program Study
Group
- Southern Area Review Committee
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Mental Retardation Advisory Council
Museum of Natural History, Virginia
- Board of Trustees
† Social Service, State Board of
Transportation Board, Commonwealth

January 16

Agriculture and Consumer Services, Department of
- Pesticide Control Board
Audiology and Speech Pathology, Board of
† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
Emergency Planning Committee, Local - New Kent
County
† Game and Inland Fisheries, Board of
† Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee

† Social Service, State Board of
Transportation Board, Commonwealth

January 17

Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Building Code Technical Review Board, State
† Chesapeake Bay Local Assistance Board
† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Coordinating Preventions, Virginia Council on
† Game and Inland Fisheries, Board of
Medicine, Board of
- Advisory Board on Physical Therapy

January 18

Dentistry, Board of

January 21

† Community Colleges, State Board for
† Health Professions, Board of
Library Board
Nursing Home Administrators, Board of
† Real Estate Appraiser Board
† Visually Handicapped, Board for the
† Water Control Board, State

January 22

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Community Colleges, State Board for
Dentistry, Board of
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
Nursing Home Administrators, Board of
Pharmacy, Board of
† Water Control Board, State

January 23

† Architects, Land Surveyors, Professional Engineers
and Landscape Architects, Board for
- Board for Architects
Transportation Safety Board
† Water Control Board, State

January 27

† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Health Services Cost Review Council, Virginia
† Lottery Department, State
† Nursing, Board of

January 28

Marine Resources Commission
† Nursing, Board of

January 29

† ASAP Policy Board - Central Virginia
Dentistry, Board of
† Nursing, Board of

Calendar of Events

January 30

Chesapeake Bay Local Assistance Board
Dentistry, Board of

January 31

Dentistry, Board of

February 3

† Cosmetology, Board for

February 4

† Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council

February 5

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Funeral Directors and Embalmers, Board of

February 6

Emergency Planning Committee, Local - Chesterfield
County
† Funeral Directors and Embalmers, Board of

February 11

Virginia Resources Authority

February 12

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Corrections, Board of

February 13

Corrections, Board of
- Liaison Committee

February 19

† Chesapeake Bay Local Assistance Board
- Regulatory Review Committee and Program Study
Group
- Southern Area Review Committee

February 20

Agriculture and Consumer Services, Department of
- Virginia Apple Board

February 24

Commerce, Board of
† Lottery Department, State

February 26

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

February 27

Chesapeake Bay Local Assistance Board

March 4

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

March 6

† Medicine, Board of
- Advisory Board on Physical Therapy

March 11

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

March 18

† Chesapeake Bay Local Assistance Board
- Regulatory Review Committee and Program Study
Group
- Southern Area Review Committee

March 25

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

March 26

† Chesapeake Bay Local Assistance Board

PUBLIC HEARINGS

January 3, 1992

† Air Pollution Control, Department of

January 6

Education, Department of

January 8

Youth and Family Services, Department of

January 14

Labor and Industry, Department of
Water Control Board, State

January 21

Deaf and Hard of Hearing, Department for the
† Social Services, Department of

January 23

† Social Services, Department of

January 24

Taxation, Department of

January 27

Water Control Board, State

January 28

Water Control Board, State

January 29

Water Control Board, State

February 3

Water Control Board, State

Calendar of Events

February 10

† Health, Department of
† Water Control Board, State

February 12

Corrections, Department of
† Water Control Board, State

February 13

† Water Control Board, State

February 14

† Water Control Board, State

February 19

† Water Control Board, State

February 24

† Waste Management, Department of

February 26

† Waste Management, Department of

February 28

† Waste Management, Department of

March 6

Criminal Justice Services, Department of

April 1

† Criminal Justice Services, Department of